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From:	Presidency
To:	Delegations
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Subject:	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 (First reading)

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Presidency compromise proposals were discussed in relations to Articles 1-43 during three meetings (26-27 September, 5-6 October and 24-25 October).

This document contains compromise proposals suggested by the Presidency in relation to Articles 44-50.

Suggested modifications are indicated as follows:

- new text compare to the Commission proposal is in **bold**;
- new text compared to the previous version is in **bold underline**;
- deleted text is in ~~strikethrough~~.

Comments made by delegations orally and in writing, as well as explanations given by the Commission and the Presidency appear in the footnotes of the Annex.

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2016/0224 (COD)

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<sup>1</sup>**

[...]

**SECTION V**

**SAFE COUNTRY CONCEPTS<sup>2</sup>**

*Article 44*

**The concept of first country of asylum<sup>3</sup>**

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<sup>1</sup> **HU, IT, NL, PL, SI:** parliamentary reservation. **AT, BE, BG, CZ, EL, ES, FI, FR, HU, IE, IT, LT, NL, PL, PT, SE, SI:** scrutiny reservation. **BE, FR, SE, SK:** Directive instead of a Regulation.

<sup>2</sup> **DE:** scrutiny reservation. **IE:** fully functioning readmission agreements at Union level with key third countries will be essential to the success of the safe country concepts.

<sup>3</sup> **SE:** scrutiny reservation. **IT:** scrutiny reservation linked to the position of this delegation in relation to the admissibility procedure (Art. 36) and to the Dublin Regulation; several aspects need to be clarified in order for this concept to be applied in practice, namely the determination of the country which has been the first to grant protection, the existence of other instruments than the Geneva Convention and the fact that the interpretation of the notion of "*sufficient protection*" by each MS might lead to divergent applications in practice and in the end favour secondary movements. **MT:** concerns in relation to this Article when applied in conjunction with Article 34 due to the proposed time limits, and the current wording in Section II of Chapter II which seems to suggest that an admissibility interview needs to be done for each and every application, and not only in those cases where the Determining Authority is going to apply Article 36(1). The increased workload combined with the shorter time frames will make these provisions difficult to implement.

1. A third country shall be considered to be a first country of asylum for an particular applicant where in that country provided that:
- (a) ~~the applicant enjoyed protection Geneva Convention in that country before travelling to the Union and he or she can still avail himself or herself of that protection; or~~ **the applicant's life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;**
  - (b) ~~the applicant otherwise has enjoyed sufficient protection in that country before travelling to the Union and he or she can still avail himself or herself of that protection.~~ **the applicant faces no risk of serious harm as defined in Regulation (EU) No XXX/XXX (Qualification Regulation);**
- (ba) the applicant is protected against refoulement and against removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law;**
- (bb) the applicant enjoyed sufficient protection as referred to in paragraph 1a before travelling to the Union and he or she can still avail himself or herself of that protection.**

**1a. Sufficient protection means:**

- (a) protection in accordance with the Geneva Convention; or**
- (b) protection in accordance with the following criteria:**
  - (i) a right of legal stay;**

**(ii) access to means of subsistence to maintain a dignified standard of living, including the right to engage in gainful employment under conditions not less favourable than those for non-nationals of the third country generally in the same circumstances;**

**(iii) access to emergency healthcare and essential treatment of illnesses; and**

**(iv) access to elementary education under the same conditions as for the nationals of the third country.**

**1b. The concept of first country of asylum may be applied where the conditions set out in paragraph 1 are met only in part of the territory of the third country provided that the applicant can safely and legally travel to that part of the third country.**

2. The determining authority shall consider that an applicant enjoys sufficient protection within the meaning of paragraph 1(b) provided that it is satisfied that:

~~(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;~~

~~(b) there is no risk of serious harm as defined in Regulation (EU) No XXX/XXX (Qualification Regulation);~~

~~(c) the principle of *non-refoulement* in accordance with the Geneva Convention is respected;~~

~~(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected;~~

~~(e) — there is a right of legal residence;~~

~~(f) — there is appropriate access to the labour market, reception facilities, healthcare and education; and~~

~~(g) — there is a right to family reunification in accordance with international human rights standards.~~

**2a. The concept of first country of asylum shall be applied only following an individual assessment of the particular circumstances of the applicant, including the respect of his or her right to family life, taking into account elements submitted by the applicant explaining why the concept of first country of asylum would not be applicable to him or her.**

3. ~~Before his or her application can be rejected as inadmissible pursuant to Article 36(1)(a), the applicant shall be allowed to challenge the application of the first country of asylum concept in light of his or her particular circumstances when lodging the application and during the admissibility interview.~~

4. As regards unaccompanied minors, the concept of first country of asylum may only be applied where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by ~~those~~ **the relevant** authorities and that he or she shall ~~immediately benefit from one of the forms of protection referred to in paragraph 1~~ **enjoy sufficient protection within the meaning of paragraph (1a)**.<sup>4</sup>
5. Where an application is rejected as inadmissible in application of the concept of the first country of asylum, the determining authority shall:
- (a) ~~inform the applicant accordingly;~~

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<sup>4</sup> **DE:** scrutiny reservation; unclear what "first" means; what are the reasons for not allowing a legal guardian to take the unaccompanied minor in charge if assurance of the authorities is given that the UAM will immediately benefit from one of the forms of protection referred to in para (1)? **PRES:** the text tries to clarify the fact that the authorities that would give the assurance are not necessarily the ones that would take the UAM in charge. **IE:** a reference to the best interest of the child should be included; redraft as follows: "*As regards unaccompanied minors, the concept of first country of asylum may only be applied, provided that it is in the best interests of the child, and where the authorities of the Member State have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she shall immediately benefit from one of the forms of protection referred to in paragraph 1.*" Alternatively, a reference to Article 21 (1) could be included. **EL:** based on the child's best interests and the obligation to trace family members of the unaccompanied (obligation imposed by the RCD), Dublin criteria on family reunification should take precedence over the application of the first country of asylum concept; add after "*as regards unaccompanied minors*" the sentence "*and without prejudice to the application of the Dublin criteria*". **IT:** reservation, delete it; the confirmation (or assurance) provides no certainty that the best interest of the child has been assessed and applied. Moreover there is no way to check the reliability of confirmation/assurance and the respect of substantive standards and sufficient protection. From a practical point of view, the contacts with the STC concerned may take long and therefore the UAM would stay in a limbo which may cause absconding. **NL:** it should not be necessary that there is an assurance from the authorities in the third country. The focus should be on the question if there is appropriate reception for the minor, along with the other guarantees in this Article. There is also a provision for this in Article 10(2) of the Return Directive.

(b) provide ~~him or her~~ **the applicant** with a document informing the authorities of the third country, in the language of that country, that the application has not been examined ~~in substance~~ **on the merits** as a consequence of the application of the first country of asylum concept.<sup>5</sup>

6. Where the third country in question does not ~~admit or readmit~~ the applicant to its territory, the determining authority **of the Member State responsible** shall ~~revoke the decision rejecting the application as inadmissible and shall give access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III~~ **examine the application on the merits and shall not consider it as a subsequent application.**<sup>6</sup>

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<sup>5</sup> **MT:** the provision of a document in the language of the first country of asylum is not feasible as this would lead to both administrative and financial burdens, as well as run counter to the aim of tackling these applications efficiently and transferring applicants to a first country of asylum as soon as possible; delete “*in the language of that country*”. **NL:** Article 44 only applies to those who can still avail themselves of the protection of the first country of asylum. In that light, there seems to be no reason to supply the applicant with a document explaining that his application has not been examined in substance. **RO:** in order to ensure an unitary practice of EU MS with respect to a particular third country considered to be the first country of asylum, it would be useful for the format of the document which will be issued to a foreign citizen or stateless person who was the subject of this type of admissibility procedure to be established by the European Commission through a mechanism similar to the one regulated in Art. 26 (2) of this proposal. **FR:** What would be the use of such a document? Why should it be up to the determining authority to establish it? **PRES:** the obligation to provide the information in the language of that country already exists in APD for STC. The purpose is to guarantee that the applicant has something that would describe his or her situation to the authorities of a FCA

<sup>6</sup> **DE:** scrutiny reservation. **IE:** in order to clarify that para (6) is intended to cover exceptional circumstances where having previously considered that the third country would readmit the person this does not happen in the particular case concerned; therefore, include a point (c) under paragraph (1) to say that a country will be considered a first country of asylum for the applicant provided that he/she will be readmitted to that country or alternatively, to include a cross-reference to Article 36(1) (a). **EL:** in practice, the determining authority should know beforehand whether the applicant will be admitted or readmitted to the third country, so as to avoid superfluous workload. Para (6) should take place exceptionally when, despite the initial acceptance, the applicant is not finally admitted.



7. Member States shall inform the Commission ~~and the European Union Agency for Asylum~~ every once a year of the countries to which the concept of the first country of asylum is applied.<sup>7</sup>

*Article 45*

**The concept of safe third country<sup>8</sup>**

1. A third country ~~shall~~ may be designated as a safe third country ~~provided that~~ where in that country:
- (a) non-nationals' life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;
  - (b) non-nationals face ~~there is~~ no risk of serious harm as defined in Regulation (EU) No XXX/XXX;

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<sup>7</sup> **DE:** unclear what is the purpose of the reporting requirement. **IT:** delete para (7). **RO:** mention a deadline by which Member States inform the Commission and the Asylum Agency of the European Union about the countries to which the concept of the first country of asylum applies (taking into consideration that this would allow the achievement of an analysis at EU level in the year when the information in question will be communicated and on the basis of this analysis, unitary practices could be actively stimulated / adopted). **PRES:** the provision offers flexibility on when to inform the Commission because it depends on when MS use the concept in individual cases. **SE:** delete para (7) because this is used only in individual cases, hence such information may be difficult to collect and be of limited value. **FR:** this would not be feasible in practice as first countries of asylum are not known in advance but only “discovered” during the assessment of the claim. Virtually, a very large number of countries can be found, some of which relate to a very small caseload, and the administrative burden would be very high, for a limited added value.

<sup>8</sup> **DE, FR, IT, SE:** scrutiny reservation. **IT:** delete reference to the admissibility criteria. **MT:** concerns in relation to this Article due to the proposed time limits in Article 34 and the current wording in Section II of Chapter II which seems to suggest that an admissibility interview needs to be done for each and every application and not only in those cases where the Determining Authority is going to apply Article 36(1). The increased workload combined with the shorter time frames will make these provisions difficult to implement.

- (c) **non-nationals are protected against** ~~the principle of non-refoulement in accordance with the Geneva Convention is respected~~ **and against** ~~(d) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law is respected;~~<sup>9</sup>
- (e) the possibility exists **to request protection and, if found to be a refugee,** to receive **sufficient protection as referred to in Article 44(1a)** ~~protection in accordance with the substantive standards of the Geneva Convention or sufficient protection as referred to in Article 44(2), as appropriate.~~

**1a. The designation of a third country as a safe third country may be made with exceptions for specific parts of its territory or with exceptions for clearly identifiable categories of persons.**

**1b.** The assessment of whether a third country may be designated as a safe third country in accordance with this Regulation shall be based on a range of **relevant and available** sources of information, including ~~in particular information~~ from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees, the Council of Europe and other relevant organisations.<sup>10</sup>

2. The concept of safe third country shall be applied :

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<sup>9</sup> **DE:** add "*and*" at the end of this point. **RO:** indicate which articles of the GC are envisaged.

<sup>10</sup> **RO:** assess if at a minimum, the Member States, the European Union Agency for Safety and Health at Work, the European External Action Service, the United Nations High Commissioner for Refugees and the Council of Europe should be cumulatively considered as sources of information, before applying the safe third country concept in individual cases, according to Art. 45, par. 2, let. (c) of the Regulation, or, for example, the information provided by the Asylum Agency the European Union and the United Nations High Commissioner for Refugees are sufficient, if, hypothetically, the Member States, the European External Action Service and the Council of Europe do not have a formal position in this regard. **SE:** "*When assessing*" instead of "*The assessment*" and "*shall be taken into account*" instead of "*shall be based*".

- (a) where a third country has been designated as safe third country **at Union or national level** in accordance with Articles **46 or 50**; **The concept of safe third country may be applied**
- (b) ~~where a third country is designated as a safe third country at Union level; or~~
- (c) ~~in individual cases in relation to a specific applicant~~ **where the country has not been designated as safe third country at Union or national level, provided that in all or part of the territory of that third country the conditions set out in paragraph 1 are met with regard to that applicant.**

**2a. The concept of safe third country shall be applied provided that:**

- (a) **an individual assessment of the particular circumstances of the applicant, including the respect of his or her right to family life, has been carried out taking into account elements submitted by the applicant explaining why the concept of safe third country would not be applicable to him or her;**
- (b) **there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country, including because the applicant has transited through that third country**
- (c) **if the conditions set out in paragraph 1 are met only in part of the third country, the applicant can safely and legally travel to that part of the third country.**
3. ~~The determining authority shall consider a third country to be a safe third country for a particular applicant, after an individual examination of the application, only where it is satisfied of the safety of the third country for a particular applicant in accordance with the criteria established in paragraph 1 and it has established that:~~

~~(a) there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for that person to go to that country, including because the applicant has transited through that third country which is geographically close to the country of origin of the applicant;~~

~~(b) the applicant has not submitted serious grounds for considering the country not to be a safe third country in his or her particular circumstances.~~

4. ~~Before his or her application can be rejected as inadmissible pursuant to Article 36(1)(b), an applicant shall be allowed to challenge the application of the concept of safe third country in light of his or her particular circumstances when lodging the application and during the admissibility interview.~~
5. As regards unaccompanied minors, the concept of safe third country may only be applied where the authorities of the Member States have first received from the authorities of the third country in question confirmation **the assurance** that the unaccompanied minor shall **will** be taken in charge by ~~those~~ **the relevant** authorities and that he or she shall ~~immediately~~ **be able to request protection and, if found to be a refugee, enjoy** have access to one of the forms of protection referred to in paragraph 1(e) **sufficient protection within the meaning of Article 44(1a).**<sup>11</sup>

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<sup>11</sup> **AT:** the confirmation from the authorities of the TC in question involves a high amount of administrative effort and cost. **CZ:** the concept of STC should not be applied to UAMs. **DE:** scrutiny reservation; unclear why the best interest of the child is not mentioned here. **EL:** based on the child's best interests and the obligation to trace family members of the unaccompanied (obligation imposed by the Reception Conditions Directive), Dublin criteria on family reunification should take precedence over the application of the safe third country concept; add after "*as regards unaccompanied minors*" the sentence "*and without prejudice to the application of the Dublin criteria*". **IT:** reservation, delete it; the confirmation (or assurance) provides no certainty that the best interest of the child has been assessed and applied. Moreover there is no way to check the reliability of confirmation/assurance and the respect of substantive standards and sufficient protection. From a practical point of view, the contacts with the STC concerned may take long and therefore the UAM would stay in a limbo which may cause absconding. **NL:** same comment as for Article 44 (4).

6. Where an application is rejected as inadmissible in application of the concept of the safe third country, the determining authority shall:
- (a) ~~inform the applicant accordingly; and~~
- (b) provide ~~him or her~~ **the applicant** with a document informing the authorities of the third country, in the language of that country, that the application has not been examined ~~in substance~~ **on the merits** as a consequence of the application of the concept of the safe third country.<sup>12</sup>
7. Where the third country in question does not admit or readmit the applicant to its territory, the determining authority **of the Member State responsible** shall ~~revoke the decision rejecting the application as inadmissible and shall give access to the procedure in accordance with the basic principles and guarantees provided for in Chapter II and Section I of Chapter III~~ **examine the application on the merits and shall not consider it as a subsequent application.**<sup>13</sup>

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<sup>12</sup> **MT:** the provision of a document in the language of the third country is not feasible as this would lead to both administrative and financial burdens, as well as run counter to the aim of tackling these applications efficiently and transferring applicants to a safe third country as soon as possible; delete “*in the language of that country*”. **RO:** in order to ensure an unitary practice of EU MS with respect to a particular third country considered to be the first country of asylum, it would be useful for the format of the document which will be issued to a foreign citizen or stateless person who was the subject of this type of admissibility procedure to be established by the European Commission through a mechanism similar to the one regulated in Art. 26 (2) of this proposal.

<sup>13</sup> **DE:** scrutiny reservation. **AT:** delete para (7). **CZ:** this delegation does not understand the text as allowing only official readmission procedure, the applicants may travel voluntarily having the residence permit of that state allowing entry. **PRES:** in this provision we are in the situation where the third country does not admit or readmit the person. In such cases the person could not return on his or her own. **EL:** in practice, the determining authority should know beforehand whether the applicant will be admitted or readmitted to the third country, so as to avoid superfluous workload. In cases when a third country does not admit or readmit the applicant, the admissibility procedure should not take place at all and the examination on the merits starts immediately.

**Designation of safe third countries at Union level<sup>14</sup>**

1. Third countries shall be designated as safe third countries at Union level, in accordance with the conditions laid down in Article 45(1).<sup>15</sup>
2. The Commission shall regularly review the situation in third countries that are designated as safe third countries at Union level, with the assistance of the European Union Agency for Asylum and based on the other sources of information referred to in ~~the second paragraph of~~ Article 45(1**b**).<sup>16</sup>

**2a. The European Union Agency for Asylum shall, at the request of the Commission, provide it with information on specific third countries which could be designated as safe third countries at Union level.**

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<sup>14</sup> **SE, SK:** scrutiny reservation. **SE:** an EU list is welcome in order to increase harmonisation, as long as the independence of the authorities and the courts to determine in individual cases can be fully upheld. This must be ensured throughout the proposal. **EL:** it is explicitly stated on p. 18 of the explanatory memorandum that designation of safe third countries at Union level will take place through the ordinary legislative procedure. There has to be more clarity as to the procedure that will be followed in the article itself. **MT:** this Article only seems to provide for a framework in relation to the designation of safe third countries, but falls short of providing an actual mechanism in relation to how this will take place; clarifications needed on the timelines envisaged for the designation of safe third countries, the methods for the designation process, e.g. will it be by means of delegated acts, co-decision? **RO:** the envisaged procedure for the designation of safe third countries at Union level should be mentioned. **SK:** this provision should clearly state what is the procedure for designation of STC at Union level and who will do it. **FR:** the procedure for designating such countries should be specified somewhere. **PRES:** the procedure is explained in the Recital (47) of Commission's proposal.

<sup>15</sup> **AT:** add the following: "*Member States may designate safe third countries in accordance with Art. 50 in national law.*" **DE:** scrutiny reservation; unclear if the "shall" clause means that all third countries must be examined to determine whether they must be designated safe third countries at Union level. **PRES:** the aim should be to have as comprehensive a list as possible.

<sup>16</sup> **SE:** "continuously" instead of "regularly".

3. The Commission shall be empowered to adopt delegated acts to suspend the designation of a third country as a safe third country at Union level subject to the conditions as set out in Article 49.<sup>17</sup>

*Article 47*

**The concept of safe country of origin<sup>18</sup>**

1. A third country may be designated as a safe country of origin in accordance with this Regulation where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally no persecution as defined in Article 9 of Regulation (EU) No XXX/XXX (Qualification Regulation), no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

**1a. The designation of a third country as a safe country of origin may be made with exceptions for specific parts of its territory or with exceptions for clearly identifiable categories of persons. The concept of safe country of origin shall not be applied where the applicant originates from or was formally habitually resident in a part of the third country for which an exception was made or where the applicant belongs to a category of persons for which an exception was made.**<sup>19</sup>

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<sup>17</sup> **RO:** these provisions are not justified since there is a distinct article( art. 49) regarding the suspension of the designation of a third country as a safe third country at Union level or its presence on the EU-wide list of safe countries of origin.

<sup>18</sup> **SE:** scrutiny reservation.

<sup>19</sup> **DE:** scrutiny reservation on "*that there is generally no persecution*".

2. The assessment of whether a third country may be designated as a safe country of origin in accordance with this Regulation shall be based on a range of **relevant and available** sources of information, including ~~in particular~~ information from Member States, the European Union Agency for Asylum, the European External Action Service, the United Nations High Commissioner for Refugees, the Council of Europe as well as other relevant organisations, and shall take into account **where available** the common analysis of the country of origin information referred to in Article 10 of Regulation (EU) No XXX/XXX (EU Asylum Agency).<sup>20</sup>
3. In making this assessment, account shall be taken, *inter alia*, of the extent to which protection is provided against persecution or mistreatment by:
- (a) the relevant laws and regulations of the country and the manner in which they are applied;<sup>21</sup>
  - (b) observance of the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms or the International Covenant for Civil and Political Rights or the United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

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<sup>20</sup> **DE:** keep Art. 37(3) of APD, as far as the assessment is based on information from international organizations and not from organizations in general; therefore redraft as follows: “*as well as relevant international organisations*”. **MT:** since EUAA common analysis might not always be available, the wording in the text should be amended as follows: “*shall take into account, where available, the common analysis*”. **RO:** assess if at a minimum, the Member States, the European Union Agency for Safety and Health at Work, the European External Action Service, the United Nations High Commissioner for Refugees and the Council of Europe should be cumulatively considered as sources of information, before applying the safe third country concept in individual cases, according to Art. 45, par. 2, let. (c) of the Regulation, or, for example, the information provided by the Asylum Agency the European Union and the United Nations High Commissioner for Refugees are sufficient, if, hypothetically, the Member States, the European External Action Service and the Council of Europe do not have a formal position in this regard. **SE:** “*When assessing*” instead of “*The assessment*” and “*shall be taken into account*” instead of “*shall be based*”.

<sup>21</sup> **CZ:** delete point (a) as it is covered by para (1).



- (c) the absence of expulsion, removal or extradition of own citizens to third countries where, inter alia, there is a serious risk that they would be subjected to the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a serious risk of an expulsion, removal or extradition to another third country;<sup>22</sup>
- (d) the provision for a system of effective remedies against violations of those rights and freedoms.

<sup>22</sup>

**CZ:** delete "*inter alia*" and from "*or where*" until the end. **IE:** scrutiny reservation, new text compared with Annex I of the recast APD. To apply the principle of non-refoulement to nationals in their own country may be a step too far and could render the application of the safe country of origin concept unworkable in practice. **IT:** delete "*expulsion, removal or*". **MT:** delete as it is already covered by the wording in letter (b). **RO:** point (c) should be coherent with the provisions of the proposal for a QR which use a certain hierarchy of provisions (first on refugee status and then on subsidiary protection) and linking aspects of sexual orientation to membership of a particular social group -Article 10 par.(1) let. (d) of the proposal for a Regulation on the conditions for obtaining international protection-. Also, the regulation might seem superfluous as long as it associates the risk of persecution with the situation in which life or freedom would be threatened on the grounds of race, religion, nationality, belonging to a particular social group or political opinion. It is also necessary to clarify the phrase "*inter alia*", in order to indicate other applicable situations than those already listed, namely the risks of persecution and / or serious risk of serious harm. Hence, redraft as follows: "*(c) the absence of expulsion, removal or extradition of own citizens to third countries where, ~~inter alia~~, there is a serious risk that they would be subjected to ~~the death penalty, torture, persecution or other inhuman or degrading treatment or punishment, or where their lives or freedom would be threatened on account of their race, religion, nationality, sexual orientation, membership of a particular social group or political opinion,~~ a serious harm in accordance with Regulation (EU) No XXX/XXX (Qualification Regulation) or to third countries from which there is a serious risk of an expulsion, removal or extradition to another third country where there is a serious risk of the same nature.*" **PRES:** QR applies to third country nationals who request protection in the EU, whereas this provision applies to nationals of the country of origin in question when they are in that country.

4. A third country designated as a safe country of origin in accordance with this Regulation may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only where:<sup>23</sup>
- (a) he or she has the nationality of that country or he or she is a stateless person and was formerly habitually resident in that country; and<sup>24</sup>
  - (b) he or she has not submitted any ~~serious grounds~~ **elements** for considering the country not to be a safe country of origin in his or her particular circumstances.<sup>25</sup>

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<sup>23</sup> **CZ:** delete "*after an individual examination of the application*".

<sup>24</sup> **AT:** delete "*and*".

<sup>25</sup> **AT, SE:** delete point (c). **SE:** serious ground is too high of a requirement in the field of evidence. The burden must be the same regardless of if the applicant comes from a country designated as safe or not and the principle of the benefit of the doubt must apply. In general, it would be advisable to go through all the proposals to perhaps remove, or at least to streamline, the requirements in the field of evidence.

**Designation of safe countries of origin at Union level<sup>26</sup>**

1. Third countries listed in Annex 1<sup>27</sup> to this Regulation are designated as safe countries of origin at Union level, in accordance with the conditions laid down in Article 47.<sup>28</sup>
2. The Commission shall regularly review the situation in third countries that are on the EU common list of safe countries of origin, with the assistance of the Union Agency for Asylum and based on the other sources of information referred to in Article 47~~5~~(2).<sup>29</sup>

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<sup>26</sup> **SE, SK:** scrutiny reservation. **SE:** an EU list is welcome in order to increase harmonisation, as long as the independence of the authorities and the courts to determine in individual cases can be fully upheld. This must be ensured throughout the proposal.

<sup>27</sup> **AT, FR, IE, MT:** scrutiny reservation on Annex I. **DE:** scrutiny reservation regarding Turkey as a safe country of origin in Annex 1; deciding whether to include Turkey in the list depends on further developments there and it should be done in close consultation with the European partners and EU institutions. **IE:** The reports of the Fundamental Rights Agency and EASO on the countries listed in the Annex were prepared more than a year ago. It would be important to update the reports for a current analysis of the situation in advance of Council adopting the proposal. Consideration could also be given to the inclusion of these countries in a Union list of safe third countries. Member States should have more input into the selection of the countries for inclusion on the list. The lists needs to be as broad as possible for the provisions to have a sustained impact. **IT:** the list in Annex I should include all TC relevant for MS, on the basis of a thorough application of Art. 48.

<sup>28</sup> **AT:** add "*Member States may designate safe third countries in accordance with Art. 50 in national law.*" **PRES:** this article refers to designation of STC at Union level therefore there is no need to make a reference to Art. 50.

<sup>29</sup> **AT:** there are no rules regarding the establishment of the first list.

3. ~~In accordance with Article 11(2) of Regulation (EU) No XXX/XXX (EU Asylum Agency Regulation), the Commission may request the The European Union Agency for Asylum **shall, at the request of the Commission,** to provide it with information on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin.<sup>30</sup> Member States may provide the Commission with information on specific third countries which could be considered for inclusion in the common EU list of safe countries of origin.~~
4. The Commission shall be empowered to adopt delegated acts to suspend the presence of a third country from the EU common list of safe countries of origin subject to the conditions as set out in Article 49.<sup>31</sup>

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<sup>30</sup> **CZ:** unclear why the drafting is different compared to Article 46 (2). **PRES:** as the text stands now, the difference stems from the fact that there is already a list for SCO while there is no such list yet for STC.

<sup>31</sup> **NL:** add a new para before para (4) drafted as follows: "*Member States may invite the Commission to assess whether a third country can be designated as a safe country of origin. The Commission shall take the invitation into consideration in deciding whether Annex I should be amended. The Commission shall inform the Member States within six months about its decision.*" **RO:** these provisions are not justified since there is a distinct article( art. 49) regarding the suspension of the designation of a third country as a safe third country at Union level or its presence on the EU-wide list of safe countries of origin.

**Suspension and removal of the designation of a third country as a safe third country at Union level or from the EU common list of safe country of origin<sup>32</sup>**

1. In case of ~~sudden~~ **significant** changes in the situation of a third country which is designated as a safe third country at Union level or which is on the EU common list of safe countries of origin, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the conditions set in Article 45 or Article 47 and, if the Commission considers that those conditions are no longer met, it shall adopt a delegated act suspending the designation of a third country as a safe third country at Union level or suspending the presence of a third country from the EU common list of safe countries of origin for a period of six months.<sup>33</sup>

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<sup>32</sup> **SE:** scrutiny reservation. **CZ:** the title should read "*Suspension and removal of a third country as a safe third country or a safe country of origin from the common list at Union level*". **PRES:** the drafting of the title reflects the fact that there is already a list for SCO while there is no such list yet for STC. **IE:** it is important that the procedure for suspension and removal from the EU list is completed as quickly as possible, both for the impact on national lists and to ensure that appeal bodies have the most up-to-date position available to them during the appeals process. **EL:** the procedure is too complicated; it should be simplified. **MT:** when a proposal to amend this Regulation is put forward by the Commission in order to remove a third country from the Union list of safe third countries, the Commission will be empowered to extend the validity period of the delegated act suspending that third country for a total period of 18 months (6 months first delegated act + 6 months extension of validity + a further 6 months if renewed). What would happen in the unlikely event that after these 18 months no decision has yet been taken by the co-legislators on whether the third country is to be removed from this list? Will the third country remain suspended or will it be automatically reinstated on the list? This matter needs to further clarified in the text.

<sup>33</sup> **AT:** 6 months is too long; it should be as soon as possible but within 2 months with "*ex nunc*" effect. **CZ:** redraft as follows: "*In case of sudden changes in the situation of a third country which is designated as a safe third country or safe country of origin at Union level ~~or which is on the EU common list of safe countries of origin~~, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the conditions set in Article 45 or Article 47 ~~and, if the Commission considers that those conditions are no longer met,~~ it shall adopt a delegated act suspending the designation of a third country as a safe third country or safe country of origin from the common list at Union level ~~or suspending the presence of a third country from the EU common list of safe countries of origin~~ for a period of six months."*

2. The Commission shall continuously review the situation in that third country taking into account *inter alia* information provided by the Member States **and the European Agency for Asylum** regarding subsequent changes in the situation of that country.<sup>34</sup>
3. Where the Commission has adopted a delegated act in accordance with paragraph 1 suspending the designation of a third country as a safe third country at Union level or suspending the presence of a third country from the EU common list of safe countries of origin, it shall within three months after the date of adoption of that delegated act submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to remove that third country from the designation of safe third countries at Union level or from the EU common list of safe countries of origin.<sup>35</sup>

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<sup>34</sup> **IT:** delete para (2) as it is redundant. **RO:** for reasons of legal symmetry, the review of the situation in the third countries concerned should also be carried out with the support of the European Union Asylum Agency and based on other sources of information referred to in Art. 45 (1), second subparagraph.

<sup>35</sup> **CZ:** redraft as follows: "*Where the Commission has adopted a delegated act on suspension in accordance with paragraph 1 ~~suspending the designation of a third country as a safe third country at Union level or suspending the presence of a third country from the EU common list of safe countries of origin~~, it shall within three six months after the date of adoption of that delegated act submit a proposal, in accordance with the ordinary legislative procedure, for amending this Regulation to remove that third country from the designation list of safe third countries or safe countries of origin at Union level ~~or from the EU common list of safe countries of origin~~."* **IT:** one month instead of three months. **RO:** although reference is made to the European Commission's proposal to amend "this Regulation" in order to remove the designation of a certain country as a safe third country at Union level, the regulation does not include such a designation at present.

4. Where such a proposal is not submitted by the Commission within three months from the adoption of the delegated act as referred to in paragraph 2, the delegated act suspending the third country from its designation as a safe third country at Union level or suspending the presence of the third country from the EU common list of safe countries of origin shall cease to have effect. Where such a proposal is submitted by the Commission within three months, the Commission shall be empowered, on the basis of a substantial assessment, to extend the validity of that delegated act for a period of six months, with a possibility to renew this extension once.<sup>36</sup>

#### Article 50

### Designation of third countries as safe third countries or safe country of origin at national level<sup>37</sup>

1. ~~For a period of five years from entry into force of this Regulation,~~ Member States may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those designated at Union level or which are on the EU common list in Annex 1 for the purposes of examining applications for international protection.<sup>38</sup>

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<sup>36</sup> **CZ:** replace "*suspending the third country from its designation as a safe third country at Union level or suspending the presence of the third country from the EU common list of safe countries of origin*" with "*on suspension*". **EL:** "*substantiated assessment*". **IT:** one month instead of three months.

<sup>37</sup> **AT, DE, FI, FR, HU, MT, SK:** national lists should be kept in addition to the EU list.

<sup>38</sup> **EL:** the criteria for designation should be explicitly mentioned. **IT:** the national lists should not be maintained by MS as this may lead to secondary movements and distortion of flows toward MS not having lists. The EU lists should include all the TCs relevant for MS. **RO:** in the context in which, according to Art. 62 (entry into force and application) this Regulation shall apply from [six months after the date of entry into force], it shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties, but Art. 50 (1) would appear to be in contradiction with it, as it would allow the maintenance of national legislative provisions by which third countries are designated as safe countries or safe countries of origin, without imposing an obligation on these countries to comply with the requirements of Art. 45 (1) and Art. 47.

2. Where a third country is suspended from being designated as a safe third country at Union level or the presence of a third country has been suspended from the EU common list in Annex 1 to this Regulation pursuant to Article 49(1), Member States shall not designate that country as a safe third country or a safe ~~third~~ country of origin at national level nor shall they apply the safe third country concept ~~on an ad hoc basis~~ in relation to a specific applicant.<sup>39</sup>
3. Where a third country is no longer designated as a safe third country at Union level or a third country has been removed from the EU common list in Annexe I to the Regulation in accordance with the ordinary legislative procedure, a Member State may notify the Commission that it considers that, following changes in the situation of that country, it again fulfils the conditions set out in Article 45(1) and Article 47.<sup>40</sup>

The notification shall include a substantiated assessment of the fulfilment by that country of the conditions set out in Article 45(1) and Article 47 including an explanation of the specific changes in the situation of the third country, which make the country fulfil those conditions again.

**Following the notification, the Commission shall request the European Union Agency for Asylum to provide it with information on the situation in the third country.**

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<sup>39</sup> **CZ:** delete "level or the presence of a third country has been suspended from the EU common list in Annex 1 to this Regulation pursuant to Article 49(1)". **DE:** reservation; the restriction should be subject to a time limit. **PRES:** the duration of the suspension is clarified in Article 49 (3) and (4). **IT:** replace "ad hoc" with "individual". **NL:** in this case, it should still be possible to apply the concept of safe third countries on basis of Article 45(2)(c); therefore delete "nor shall they apply the safe third country concept on an ad hoc basis in relation to a specific applicant." **RO:** for terminological coherence with Art. 45 (2) (c) the term "ad hoc" could be replaced by "in individual cases". **SE:** delete "nor shall they apply the safe third country concept on an ad hoc basis in relation to a specific applicant." because this reference is contrary to the independence of the authorities and courts. Even if a country is suspended it may be relevant after an individual assessment due to the circumstances in that case.

<sup>40</sup> **AT:** 6 months is too long; it should be as soon as possible but within 2 months with "ex nunc" effect. **CZ:** add "or safe country of origin" in the first line after "safe third country"; delete "or a third country has been removed from the EU common list in Annexe I to the Regulation in accordance with the ordinary legislative procedure".



The notifying Member State may only designate that third country as a safe third country or as a safe country of origin at national level provided that the Commission does not object to that designation.<sup>41</sup> **The Commission shall inform the notifying Members State within a reasonable time.**

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<sup>41</sup> **AT:** delete "*only*" and replace "*provided that*" with "*as long as*"; MS need to know if and when COM will object. **DE:** unclear how suspending/removing a country from the common EU list will affect an existing designation at national level. Art. 50(2) and (3) only refer to the subsequent national designation. **IE:** scrutiny reservation on this subpara; it is important to specify a time limit within which the objection should take place. **IT:** a time limit should be mentioned. **MT:** for this subpara the text that was already agreed upon at COREPER in relation to the Proposal for a list of safe countries of origin should be retained; therefore, add following to the current text: "*The Commission's right of objection shall be limited to a period of two years after the date of removal of that third country from the designation of safe third countries at Union level or from the EU common list of safe countries of origin. Any objection by the Commission shall be issued within a period of three months after the date of notification by the Member State and after due review of the situation in that third country, having regard to the conditions set out in Articles 45(1) and 47(1) and (3) of this Regulation. After the period of two years, the Member State shall consult with the Commission on the designation of that third country as a safe third country or as a safe country of origin at the national level. Where it considers that those conditions are fulfilled, the Commission may propose an amendment to this Regulation in order to designate that third country as a safe third country at Union level or add that third country to the EU common list of safe countries of origin.*" **NL:** the competence of the Commission to make an objection in the last subparagraph should not be unlimited; include the provisions of the Council position of the SCO Regulation, to set a term of two years.

4. Member States shall notify the Commission and the European Union Agency for Asylum of the third countries that are designated as safe third countries or safe countries of origin at national level immediately after such designation. Member States shall inform the Commission and the Agency once a year of the other safe third countries to which the concept is applied on an *ad hoc* basis in relation to specific applicants.<sup>42</sup>
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<sup>42</sup> **CZ:** unclear if this drafting means that MS have no obligation to notify current list, but only new countries added; delete "*Member States shall inform the Commission and the Agency once a year of the other safe third countries to which the concept is applied on an ad hoc basis in relation to specific applicants*" as it is too burdensome. **EL:** no support for the application of the safe third country concept on an ad hoc basis in relation to a specific applicant. This will open the door to a differentiated application of the concept. **RO:** in the light of para (1), both newly designated countries and the third countries already designated at national level should be notified on the date of entry into force of this Regulation; it would also be useful to mention a deadline by which Member States should inform the Commission and the European Union Agency for Asylum in relation to the countries to which they apply "ad hoc" (see also the comment under para( 2) ) the concepts in question (given that this would allow an EU-wide analysis to be carried out in the year in which the information is communicated in this case, and on the basis of this analysis, unitary practices could be stimulated / adopted). **SE:** delete the second sentence (see comment on Art. 44 (7)).