



Council of the
European Union

Brussels, 8 May 2018
(OR. en)

8735/18

**Interinstitutional File:
2016/0224 (COD)**

LIMITE

**ASILE 22
CODEC 723**

NOTE

From: Presidency
On: 17 May 2018
To: Strategic Committee on Immigration, Frontiers and Asylum

Subject: Reform of the Common European Asylum System
- The safe countries concept
= Policy debate

Background

The proposal for an Asylum Procedure Regulation presented in July 2016 contains detailed provisions regarding the **safe countries concept**, namely the safe third country, the first country of asylum and the safe country of origin. The safe third country and the first country of asylum are grounds for declaring an application inadmissible (Article 36¹ - optional admissibility checks according to the latest Presidency compromise proposals), whereas the safe country of origin is a ground for examining an application in an accelerated examination procedure (Article 40 - mandatory accelerated procedure).

¹ 7366/18

The criteria that should be fulfilled by a **safe third country** or by a **first country of asylum** and the related concept of 'sufficient protection' were the object of ample discussions in the Council preparatory bodies, especially following the European Council conclusions of June 2017, which requested an alignment of the relevant provisions in the proposal with the effective requirements arising from the Geneva Convention and EU primary law. These elements were also discussed at the SCIFA meeting² on 28 September 2017. Significant progress has been made in clarifying these concepts and the latest Presidency compromise proposals have been generally supported by Member States. As regards the EU list of safe third countries, the latest Presidency compromise provides that it is to be adopted via a Regulation modifying the Asylum Procedure Regulation (Article 46(1)) and that national lists may continue to exist in parallel (a sunset clause for such lists existed in the original Commission proposal).

The establishment of an EU common list of **safe countries of origin** was originally dealt with in a Commission proposal³ presented in September 2015. The mandate⁴ to start negotiations with the EP was approved by Coreper in March 2016 and trilogues started. The Annex to the Commission proposal listing the safe third countries of origin was bracketed and the Council requested an expert contribution from the EASO to facilitate its assessment and to allow it to take a position on the countries listed in the Annex. In January 2017, the Maltese Presidency together with the EP decided to freeze the process and continue discussions within the framework of the proposal for an Asylum Procedure Regulation. The EU list of safe countries of origin, which was annexed to the original proposal, is also included in the proposal for an Asylum Procedure Regulation; the latest Presidency compromise proposals provide that national lists for safe countries of origin may continue to exist in parallel (a sunset clause for such lists existed in the original Commission proposal).

² 12331/17

³ 11845/15

⁴ 7095/16

The procedure provided for in the latest Presidency compromise proposals to suspend and remove a country from the EU list of safe third countries or from the EU list of safe countries of origin is similar: if significant changes occur in a country which is on the list, the Commission suspends the inclusion of that country in the list via a delegated act. Three months after the adoption of the delegated act, the Commission should make a proposal for a Regulation removing the country in question from the list, which must be adopted through the ordinary legislative procedure.⁵

List of safe countries of origin

The Presidency compromise proposals on all provisions regarding the safe countries concepts were discussed within the Asylum Working Party and at JHA Counsellors level. However, the content of the Annex to the Commission proposal was never discussed.

The proposal for an Asylum Procedure Regulation sets out the criteria which will be taken into account when assessing whether a third country may be designated as a safe country of origin (Article 47). In November 2016, following a Coreper request, the EASO presented in the Asylum Working Party reports⁶ for all the countries included in the list in the Commission's original proposal of September 2015.

Some key indicators for assessing whether a third country may be designated as a safe country of origin may include an extremely low recognition rate, candidacy for EU membership, membership of the ECHR, a visa liberalisation regime, a relationship with Member States and the existence of diplomatic representations, push factors which are in general not asylum-related, etc.

⁵ Such lists are an essential element of the APR and therefore may only be modified via a Regulation that should be adopted through the normal legislative procedure. See the ECJ judgment in case C-133/06.

⁶ 14543/16. The reports can be found here: <https://www.easo.europa.eu/information-analysis/country-origin-information/country-reports>

Following the conclusions of the JHA Council meeting on 20 July 2015, at which Member States agreed that priority should be given to an assessment by all Member States of the safety of the Western Balkans, the EASO organised an expert-level meeting with the Member States on 2 September 2015, where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo, the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered safe countries of origin (recital 53 of the Commission proposal for an Asylum Procedure Regulation).

As regards Turkey, the Commission proposal for an Asylum Procedure Regulation sets out that the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including ratification of all major international human rights treaties. Turkey has been designated as a candidate country by the European Council and negotiations have been opened (recital 62).

List of safe third countries

As regards the concept of safe third countries, the Commission proposes a harmonised EU approach to its use so as to guarantee that it is applied in the same manner in all Member States, and proposes that safe third countries should be designated at Union level through a future amendment to the Asylum Procedure Regulation and after carrying out a detailed, evidence-based assessment involving substantive research and broad consultation with Member States and relevant stakeholders (Article 46). Designation of a country as a safe third country at EU level could be suspended for a certain period and revoked. When a third country is suspended from being designated as a safe third country at Union level Member States must not designate that country as a safe third country at national level nor apply the safe third country concept in relation to a specific applicant. If the third country is no longer designated as a safe country at Union level Member States may only designate that third country as a safe third country provided that the Commission does not object to that designation.

Questions

In the light of the above, delegations are invited to answer the following questions:

1. Can Member States support the proposed list of safe countries of origin annexed to the Commission proposal for an Asylum Procedure Regulation? Should all proposed third countries be part of the list? If not, which third country or countries should not be included in the list?
 2. Should an EU list of safe third countries be adopted at the same time as the Asylum Procedure Regulation is adopted? If yes, which third countries should be put on that list?
-