Council of the European Union

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NOTE

From:	Dimitris Avramopoulos, Commissioner for Migration, Home Affairs and Citizenship
On:	15 July 2015
To:	Ministers
Subject:	-"Hotspot" approach - FRONTEX support to return of irregular migrants - "Safe countries of origin"

Delegations will find attached a copy of a letter sent by Commissioner Avramopoulos to Ministers on the above subjects.

Information note on the follow-up to the European Council Conclusions of 26 June 2015 on "safe countries of origin"

INTRODUCTION

The European Council, in its Conclusions of 26 June 2015, has called on the Commission to "*set out by July 2015 measures to be taken to use EASO to coordinate the implementation of the "safe country of origin" provisions in the Asylum Procedures Directive*". In addition, it was recalled that the Commission "*indicated its intention to strengthen the "safe country of origin" provisions in the Asylum Procedures Directive, including the possible establishment of a common EU list of safe countries of origin*".

Against this background, this note explains the applicable legal framework that regulates the "safe country of origin" principle and sets out how the Commission intends to follow up on the commitment expressed in the European Agenda on Migration presented on 13 May 2015 and the above mentioned European Council Conclusions.
The background of this note includes a summary prepared by EASO of the current situation in the Member States as regards the designation of "safe countries of origin" at national level.

LEGAL FRAMEWORK

For the time being, there is no possibility under EU law to adopt a binding common list of "safe countries of origin" at EU level.

The recast Directive 2013/32 of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (Asylum Procedures Directives), which is applicable from 21 July 2015, allows Member States to adopt national lists of "safe countries of origin" in accordance with the criteria defined in its Annex I. However, this Directive does not give competence to the Council and the European Parliament to adopt a common EU list of "safe countries of origin".

The Asylum Procedures Directive allows Member States, if they designate at national level certain third countries as "safe countries of origin", to accelerate the examination of applications of the persons who have the nationality of these third countries as well as to process these applications at the border and in the transit zones[1].

[1] This does not dispense however with the need for an examination of the application on its merits, in accordance with the principles and guarantees laid down in this Directive. In addition, although the fact that the country of nationality of the applicant has been designated as "safe country of origin" creates a presumption of safety, an applicant shall always be given an effective opportunity to rebut this presumption of safety in light of personal circumstances.
If the application of a person who has the nationality of a third country designated as "safe country of origin" is eventually declared unfounded, following an examination on its merits, the appeal may have a non-automatic suspensive effect. In addition, Member States have the possibility to declare such an application "manifestly unfounded", which allows implementing swift return procedures (forced returns and entry bans) as well as other measures possibly provided for in national law (e.g. restriction in the number of levels of appeal).

STRENGTHENING OF THE SAFE COUNTRY OF ORIGIN PROVISION IN THE ASYLUM PROCEDURE DIRECTIVE

The need of strengthening of the Safe Country of Origin concept is necessary not only *to support the swift processing of asylum applicants from countries designated as safe*, but also *that return procedures can more swiftly be initiated for persons whose claim has been rejected*. This was explained in more detail in the letter sent by Commissioner Avramopoulos to Ministers on 9 June.

Although there is currently no legal basis for adopting a binding common EU list of "safe countries of origin", much can be achieved in the short term by coordinating the designation of "safe countries of origin" at national level, starting first with an assessment of the third countries on which there is a broad consensus among Member States that they should be considered as Safe Countries of Origin. In this context it should be noted that such coordinated approach must be complemented with special procedures and other measures at national level, such as efficient return procedures, to bear results.

Means to further harmonise, in the medium term, the implementation of the "safe country of origin" provisions in the Asylum Procedures Directive, including the possible establishment of a common EU list of safe countries of origin" must also be considered.

In order to respond to the June European Council Conclusions and the commitments expressed in the European Agenda on Migration, a two steps approach should be followed:

In the short-term, the reinforced implementation of the "safe country of origin" provisions of the current Asylum Procedures Directive will be led by EASO through a coordination process in order to increase in practice the harmonisation in the use of Member States' national "safe country of origin" lists. The objective will be to promote a consistent use of the recast Asylum Procedures Directive rules regarding "safe country of origin" in respect of the same third countries by Member States.

In the medium-term, and as envisaged in the European Agenda on Migration, the Commission will also examine whether the **Safe Country of Origin provisions** of the Asylum Procedures Directive should be strengthened in particular to provide for a legal basis for the adoption of a binding common EU list of "safe countries of origin".

A. Short term

Regarding the **short-term objective of increasing in practice harmonisation in the use of Member States' national "safe country of origin" (SCO) lists**, and in line with the call made by the European Council, **EASO will start a process whereby Member States can agree that certain third countries should be considered as SCOs**.

Phase I - Preparatory phase

- **Meeting with Member States' experts held on 08/07/2015**
- **Information note to the Council and the European Parliament**

Phase II - Implementation of the "safe country of origin" principle

1. EASO to organise a series of **coordination meetings with the Member States on the implementation of the SCO provisions in the Asylum Procedures Directive (APD). The Commission and UNHCR should be involved in the process. EEAS** could be involved, **as relevant. The European Parliament should be informed**;

2. EASO to **agree with Member States on a common approach and procedural steps** for assessing which third countries of origin should be considered as safe, starting with the countries of the Western Balkans, taking into consideration the criteria laid down in Annex I of the recast APD, Country of Origin Information (COI), jurisprudence, as well as any other relevant source of information used by the Member States for their national lists;

3. EASO to identify, together with Member States, **an indicative list of third countries for which there is a broad consensus that they should be designated as SCOs; (e.g. many Western Balkan countries).**

4. EASO should **verify, together with Member States' experts, on the basis of available recent COI (made available to EASO by Member States) and possible verifications on the ground that the third countries preliminarily identified fulfil the conditions for designation as SCOs** laid down in Annex I of the recast APD. Priority should be given to verification and inclusion of the **Western Balkan countries**;

5. Once the verification process is completed, the **indicative SCO list could be endorsed by EASO Management Board as agreed;**

6. The **indicative SCO list should be a living document**. EASO should carry on discussions with Member States in order to **progressively add third countries** to it. In addition, the list should be subject to **a review mechanism,** including the **possibility to remove third countries** from it, at regular intervals (e.g. systematic review every 6 months) and also on an ad-hoc basis (e.g. in response to new COI, jurisprudence etc.).

B. Medium term

Phase III (Possible legislative amendment)

Based on experiences with the approach described above, building on the results of the coordination work led by EASO, the Commission could propose an amendment of the recast APD in order to provide for a legal basis for the adoption of a binding common EU list of SCOs. In addition, the possibility of proposing additional procedural consequences for applicants from third countries designated as SCOs (e.g. prescribed time-limits and more limited guarantees) could be considered.

Background information

Summary of the current situation in the Member States on the designation of "safe countries of origin"

1. Some Data Trends

1.1. Low Recognition Rates vs. Number of Applicants

- When considering statistical indicators for the assumed degree of safety of a country of origin the most logical element focuses on is the recognition rate.
- When looking at the possible impact, however, of the inclusion of a country of origin into a safe countries list, one should also take into consideration the actual number of applicants from this given country arriving in the EU+. If the influx from a particular country of origin is very low, only few cases will be affected by the measure.
- The following table shows a ranking of countries of origin according to recognition rate (from low to high), and for which at least 1,000 applicants were registered in 2014. All 6 WB countries can be found in the top 10.

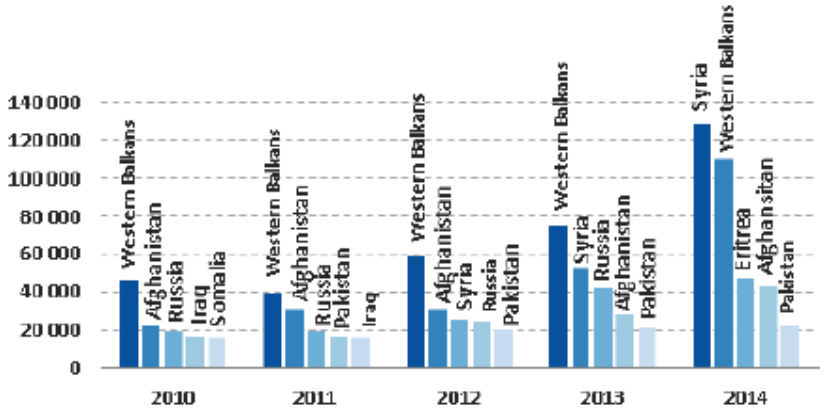
	CoO	Asylum applicants	Positive decisions 1st instance	Total decisions 1st instance	Recognition Rate
1	FYROM	10,330	70	8,185	0.9%
2	Serbia	30,840	400	22,070	1.8%
3	Montenegro	1,845	40	1,355	3.0%
4	Bosnia and Herz.	10,705	330	7,210	4.6%
5	India	3,505	80	1,690	4.7%
6	Georgia	8,560	335	6,135	5.5%
7	Haiti	2,005	105	1,730	6.1%
8	Kosovo	37,895	830	13,145	6.3%
9	Algeria	6,700	215	2,930	7.3%
10	Albania	16,825	1,040	13,350	7.8%
11	Mongolia	2,015	85	965	8.8%
12	Bangladesh	11,680	755	7,355	10.3%
13	Armenia	5,700	440	3,890	11.3%
14	Morocco	4,255	210	1,805	11.6%
15	Tunisia	2,340	170	1,440	11.8%
16	Vietnam	1,410	100	690	14.5%
17	Lebanon	1,835	150	880	17.0%
18	Ukraine	14,050	510	2,845	17.9%
19	Azerbaijan	2,905	405	2,225	18.2%
20	Congo	1,040	210	1,090	19.3%
21	Congo (DR)	7,340	1,520	7,400	20.5%
22	Angola	1,070	215	1,015	21.2%
23	Turkey	5,160	970	4,545	21.3%
24	Mauritania	1,365	310	1,345	23.0%
25	China	5,170	1,185	5,090	23.3%

26	Russia	19,815	3,065	12,355	24.8%
27	Ghana	4,150	410	1,605	25.5%
28	Pakistan	22,125	4,235	15,810	26.8%
29	Cameroon	2,455	365	1,275	28.6%
30	Nigeria	19,970	2,815	9,720	29.0%
31	Sri Lanka	5,480	1,615	5,105	31.6%
32	Côte d'Ivoire	3,450	855	2,570	33.3%
33	Senegal	6,435	1,050	3,060	34.3%
34	Sierra Leone	1,010	205	595	34.5%
35	Guinea	6,375	1,770	5,040	35.1%
36	Gambia	11,515	1,525	4,335	35.2%
37	Egypt	3,955	1,070	2,890	37.0%
38	Mali	12,945	2,405	6,380	37.7%
39	Ethiopia	2,820	715	1,665	42.9%
40	Sudan	6,230	1,760	3,745	47.0%
41	Libya	3,290	660	1,335	49.4%
42	Iran	10,860	5,145	8,655	59.4%
43	Afghanistan	41,370	11,170	17,895	62.4%
44	Unknown	9,600	3,165	4,905	64.5%
45	Somalia	16,470	5,850	8,910	65.7%
46	Palestine	1,980	535	800	66.9%
47	Iraq	21,310	7,280	10,445	69.7%
48	Stateless	15,605	7,805	8,870	88.0%
49	Eritrea	36,925	14,150	15,880	89.1%
50	CA Republic	1,000	505	550	91.8%
51	Syria	122,115	65,450	69,010	94.8%

1.2. Focus on Western Balkans

Proportion of Western Balkan applicants in the overall influx of applicants

Main countries/Groups of origin of applicants, 2010-2014

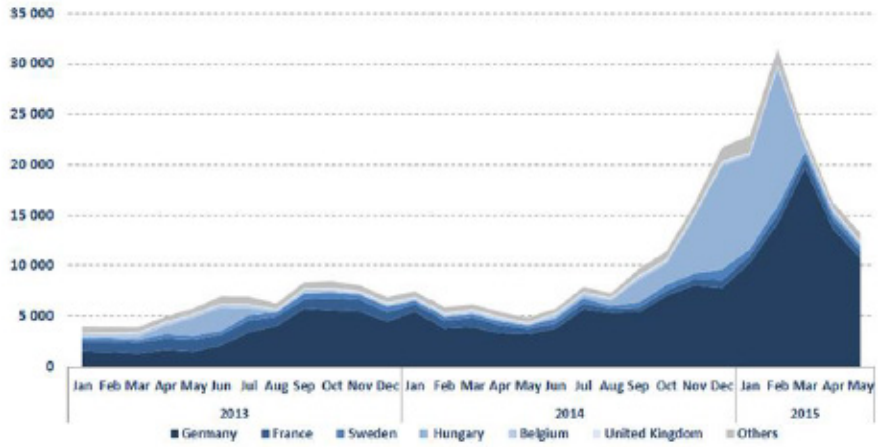


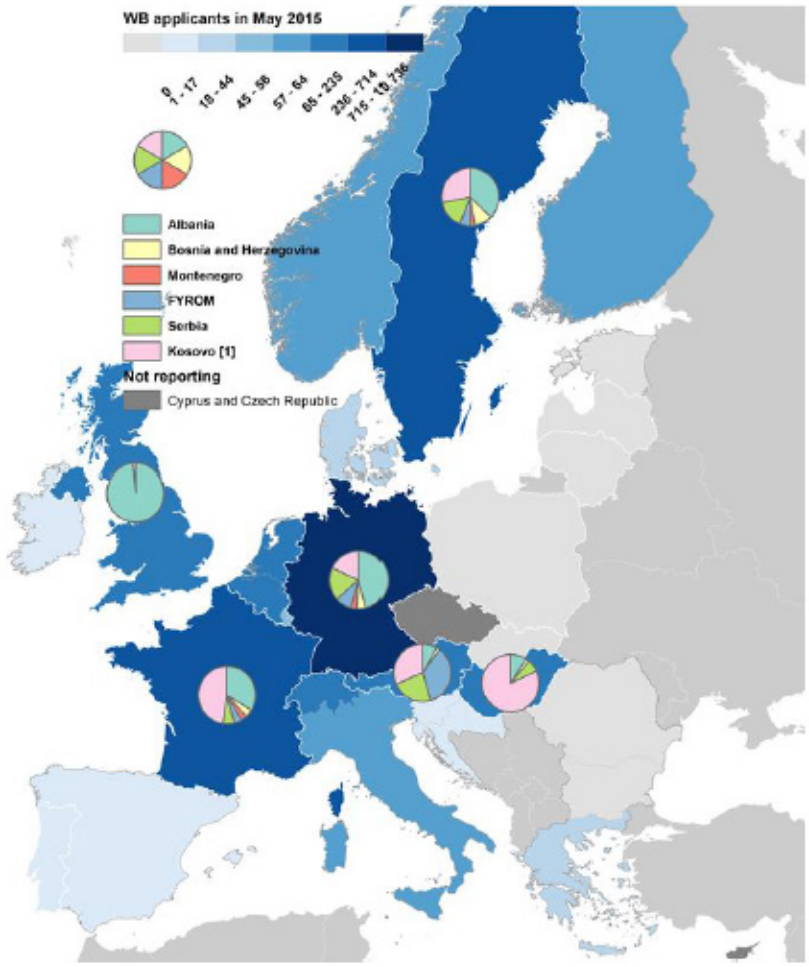
- Between 2009 and 2013, the number of applicants from Western Balkan countries, when considered together, has in every year consistently represented the largest portion of the overall number of applications for international protection lodged in the EU+.
- In 2014, however, the number of Syrians applicants represented the largest portion of asylum applicants in the EU+
- In the period Jan-May 2015, as visible on the map below, the Western Balkans regained the first position

Share of repeated applicants

- The share of "repeated applicants" is particularly significant for the WB flow especially when compared to that of other nationalities. In 2014, there were 22 415 repeated applicants from the WB region which is larger than the number of WB applicants (first time and repeated) received in 2008.
- While the recent surge of Kosovar applications and intensification of Albanian inflow mainly resulted from first time applicants, in the first five months of 2015 more than a third of applicants form Bosnia and Herzegovina, FYROM, and Serbia consisted of repeated applications

Applicants from WB countries in the EU+, January 2013 – May 2015





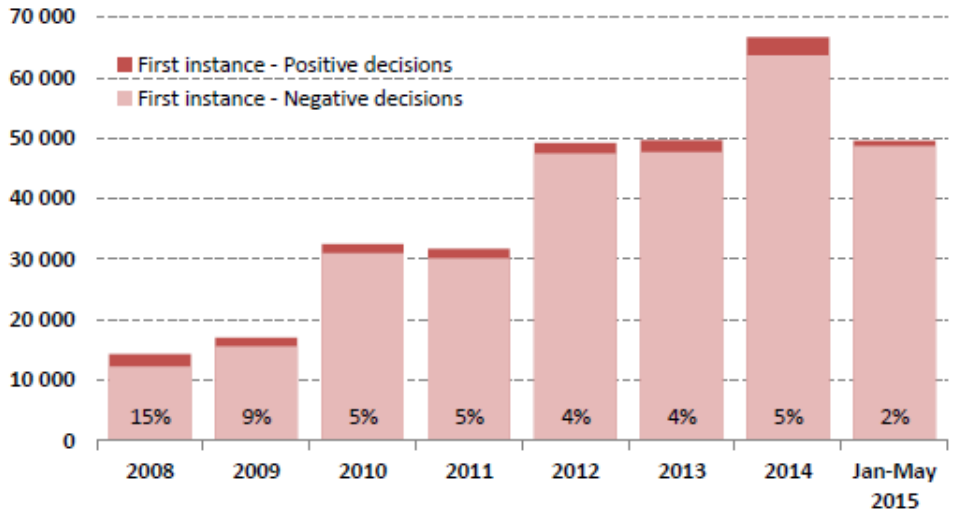
13 233 applicants from the six WB countries submitted applications for international protection in EU+ countries in May 2015, a drop of 19% compared to April.

- The drop is due to a strong decrease in the number of Kosovar applicants, which halved compared to the previous month.
- The number of Albanian applicants continued at a high level, similar to April. In May 2015, applicants from Albania were the most numerous out of all WB nationals. Germany remained the main country of origin of WB and accounted for 81% of all WB applicants recorded at EU+ level. France and Sweden came second and third with 5% and 3% respectively.

Recognition Rate

- The increasing trend in the volume of WB applicants for international protection goes against the evolution of their recognition rate in first instance which has decreased from 15 % in 2008 to 5 % or less since 2010.

First instance decisions on applicants from the Western Balkan in the EU+, 2008-2015 (January – May)[2]

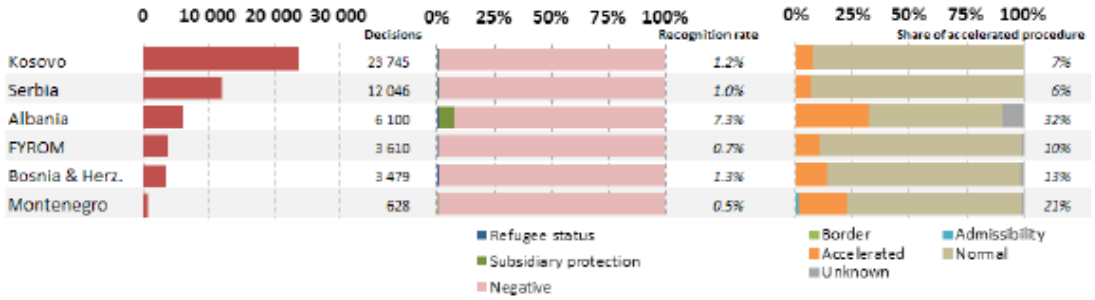


- The likelihood of receiving a positive decision at first instance is generally extremely low for WB applicants, though differences exist among the six WB countries or origin. Albanian applicants in particular have a significantly higher recognition rate standing at 7.3 %[3].

First instance decisions in the EU+ by Western Balkan country, type of decisions issued and type of procedure used, January – May 2015

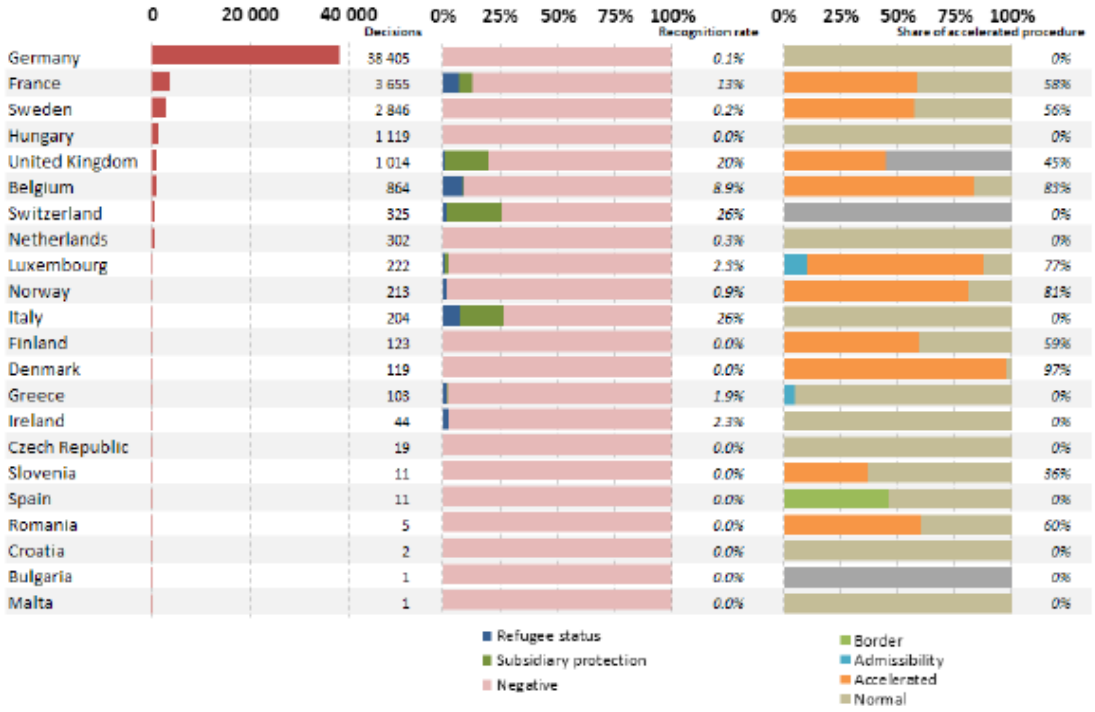
[2] Contrary to Eurostat, in the framework of the EPS collection authorisations to stay for humanitarian reasons under national law concerning international protection are considered negative decisions.

[3] A significant proportion of applications from citizens of Albania have cited grounds of persecution as part of blood feuds in the country of origin.



· It is worth noting than several EU countries are using accelerated procedures established in national law as per the relevant provisions of the Asylum Procedures Directive (APD) in the case of the Western Balkan applicants. In Denmark, Belgium, Norway and Luxembourg; close to 80 % of the first instance decisions on WB applicants were issued via accelerated procedure. To a lesser extent, France Sweden and the United Kingdom also issued nearly half of their first instance decisions on WB applicants via an accelerated procedure.

First instance decisions on Western Balkan applicants in EU+ countries by type of decisions issued and type of procedure used, January – May 2015



· This low first instance recognition rate is further confirmed by the thin prospects of receiving protection in appeal or review4 with rates of 15 % in 2008 going down to 4 % in 2014.

[4] Data on decisions in appeal or review is not covered by the EPS collection and submitted to Eurostat on an annual basis.

1.3. The current situation as regards current national SCO list

	Prioritisation of applications	Accelerated examination procedure	Border procedure	Admissibility procedure	Different procedural rules for subsequent applications	Safe country of origin	Safe third country	Explicit withdrawal	Implicit withdrawal
AT	●	●	●	●	●	●	●		
BE	●	●		●	●	●		●	●
BG	●	●			●	○	○	●	●
CY	●	○		●	●	○	○	●	●
CZ	●	●	●	●	●	●	●	●	●
DE	●		●	●	●	●	●	●	●
EE	●	●	●		●	●	●	●	●
EL	●	●	●	●	●	○	○	●	●
ES	●	●	●	●	●			●	●
FI	●	●		●	●	●	●	●	●
FR	●	●	●		●	●			
HU	●	●	●		●	●	●	●	●
IE	●	○	●	●	●	●	○	●	●
IT	●				●			●	●
LT	●	●	●	●	●	○	○	●	●
LU	●	●		●	●	●	●	●	●
LV	●	●		●	●	●	○	●	●
MT	●	●			●	●		●	●
NL	●	●			●	●	●	●	●
PL	●	●		●	●			●	●
PT		●	●	●	●	○	○	●	●
RO	●	●	●		●	○	○	●	●
SE	●	●		●	●			●	●
SI	●	●		●	●	○	○	●	●
SK		●	●		●	●	○	●	●
UK		●		●	●	●	●	●	●

NB: The empty shapes indicate the concept is envisaged in legislation, but not currently applied in practice.

- The 'safe country of origin' concept is included in the legislation of twenty-two MS. However, only fifteen MS (**AT, BE, CZ, DE, EE, FI, FR, HU, IE, LU, LV, MT, NL, SK** and **UK**) apply it in practice.

The remaining seven MS foresee its application in the national legislation, however they do not currently apply the concept in practice (**BG, CY, EL, LT, PT, RO** and **SI**).

- Out of the fifteen MS that apply the concept of 'safe country of origin', **10 MS have designated national lists of safe countries of origin** (**AT, BE, CZ, DE, FR, IE, LU, MT, SK** and **UK**), whereas five apply the concept on a case-by-case basis (**EE, FI, HU, LV** and **NL**).
- As outlined in the table below, MS apply different criteria to designate a country as a safe country of origin:

Criteria for designating a country as a safe country of origin		
APD recast criteria (Annex I)	Stable democratic political system governed by law	**BE, CZ, DE, FI, FR, IE, RO, SK**
	Ratification and compliance with international treaties on human rights and fundamental freedoms	**BE, CZ, DE, FI, FR, IE, LU, RO, SK**
	Absence of persecution	**AT, BE, CY, DE, FI, HU, LU, SK, UK**
	Absence of serious violations of human rights (torture or inhuman or degrading treatment or punishment)	**BE, CY, DE, FI, HU**
	Availability of effective legal remedies against violations of human rights	**AT, BE, BG, DE, HU, LU, RO**
	Absence of threat by reason of indiscriminate violence	**BE, CY, DE, HU**
	Compliance with the principle of *non-refoulement*	**BE, DE, LU**
Other criteria	The number of asylum applications made by the nationals/former residents of the respective country and the recognition rate	**CZ, RO**
	General political situation and information on whether such a country is a refugee-originating country	**MT**
	Allowed performance of activities by legal entities overseeing the observance of human rights in the country	**SK**
	Removal to that country will not contravene obligations under the international human rights treaties	**UK**

- National lists of safe countries of origin are usually reviewed on an ad hoc basis when necessary. Periodical review is in place in **MT, BE** (envisaged as an annual review, but in practice twice a year), and **FR** (twice a year).
- The countries included in the national lists of safe countries of origin and their number varies significantly among MS.
- Some MS have designated in their national lists other European countries as safe countries of origin, including the other MS (**AT, DE, MT, RO**); European Economic Area countries and Switzerland (**AT, CZ, MT, SK**). In the **UK**, any application for international protection from a national of a country in the European Economic Area (EEA) or Switzerland is considered in

accordance with the EEA Regulations 2006[1] which allows such applications to be certified as 'clearly unfounded' in certain circumstances. In case of an appeal against a negative decision if the application has been certified as 'clearly unfounded', the appeal would have a non-automatic suspensive effect.

Role of COI in designating safe countries of origin

- In some MS that have lists of safe countries of origin in place, the COI unit plays an important role. This is for instance the case in AT, BE, CZ, DE, FR, UK.
- The role of the national COI unit can range from just providing regular COI reports to making assessments and elaborating detailed advice for the purpose of safe country designation, to be complemented with, e.g., opinions of MFA/diplomatic missions.
- For those drafting specific reports on potential safe countries of origin, indicators on which the terms of reference are based may vary (full list in Annex 2). Recurrent indicators, partly linked to the APD recast Annex 1 criteria are:
    - legal framework (incl. ratification of international treaties and conventions),
    - political system (stable/democratic),
    - rule of law (judicial system, avenues of complain, fair trial),
    - security situation
    - general human rights violations,
    - incidents of persecution and state protection against persecution,
    - situation of minority groups (ethnic, religious, gender, LGBT) and level of discrimination
    - durability of measures
    - socio-economic situation, health and social security

- A number of EU+ countries have informed EASO about recent COI products (reports or query responses) on WB countries, some of which have been developed specifically in the context of safe country designation.

[1] The Regulation is available at http://www.legislation.gov.uk/uksi/2006/1003/pdfs/uksi_20061003_en.pdf.

Safe countries of origin as per Art 36 of the Asylum Procedure Directive (APD), based on information available to EASO on designations by Member States (Art 37 of the APD)

EU+ country	Safe Countries of Origin
Austria	EU Member States EEA countries/Switzerland Australia Canada New Zealand Albania Bosnia and Herzegovina Kosovo* FYROM Montenegro Serbia
Belgium	Albania Bosnia and Herzegovina FYROM Kosovo* Serbia Montenegro India
Bulgaria	Albania Armenia Bosnia and Herzegovina Georgia Macedonia Serbia Montenegro Turkey Ukraine Bangladesh India China Algeria Ghana Ethiopia Nigeria Tanzania
Czech Republic	EEA countries/Switzerland Liechtenstein Albania

	Bosnia and Herzegovina FYROM Kosovo Montenegro Serbia Canada USA Australia New Zealand Mongolia
Denmark	EU MS EFTA countries Albania Australia Canada Bosnia Kosovo Macedonia Montenegro Serbia Japan Moldova Mongolia New Zealand Russian Federation USA
France	Albania Bosnia and Herzegovina FYROM Montenegro Serbia Armenia Georgia Moldova India Mongolia Benin Cape Verde Ghana Mauritius Senegal Tanzania
Germany	EU Member States Bosnia and Herzegovina FYROM Serbia Ghana Senegal

Ireland	EU Member States South Africa
Luxembourg	Albania Benin (only for male applicants) Bosnia and Herzegovina Cape Verde Ghana (only for male applicants) FYROM Kosovo* Montenegro Senegal Serbia Ukraine
Malta	EU Member States EFTA countries/Switzerland USA Canada Australia New Zealand Japan India Brazil Costa Rica Chile Jamaica Uruguay Botswana Benin Cape Verde Gabon Ghana Senegal
Romania	EU Member States
Slovakia	EEA countries/Switzerland Montenegro USA Canada Australia New Zealand Japan Ghana Kenya Mauritius South Africa Seychelles
UK	Albania Bosnia and Herzegovina

	FYROM Kosovo* Montenegro Serbia Moldova Ukraine India Mongolia South Korea Bolivia Brazil Ecuador Peru Gambia (only for male applicants) Ghana (only for male applicants) Kenya (only for male applicants) Liberia (only for male applicants) Malawi (only for male applicants) Mali (only for male applicants) Mauritius Nigeria (only for male applicants) South Africa Sierra Leone (only for male applicants)

*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence

Current safe countries by MS

Safe countries of origin as per Art 36 of the Asylum Procedure Directive (APD), based on information available to EASO on designations by Member States (Art 37 of the APD)