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**NOTE**

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	11845/15 ASIM 81 COWEB 86 CODEC 1171
Subject:	<p>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</p> <p>- Draft letter to Executive Director of European Asylum Support Office (EASO)</p> <p>- Mandate for negotiations with the European Parliament</p>

Background:

On 9 September 2015, the Commission submitted to the Council a 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<sup>1</sup>.

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<sup>1</sup> doc. 11845/15

The Asylum Working Party, the Friends of Presidency and JHA Counsellors examined the proposal at several of their meetings under the Luxembourg Presidency. On 17-18 December 2015, the European Council invited the Council to rapidly decide on its position on the EU common list of safe countries of origin<sup>2</sup>.

Under the Netherlands Presidency the examination of the above proposal continued at the meetings of the Asylum Working Party on 21-22 January and 4-5 February and JHA Counsellors meetings on 22 February and 4 March 2016. At these meetings, the delegations agreed with the Presidency suggestion to achieve a mandate for negotiations with the European Parliament on the main text of the proposal, placing the Annex to the proposal and the corresponding recitals in brackets, while at the same time requesting an expert contribution from the European Asylum Support Office on the countries currently included in the Annex of the Commission proposal.

On the basis of the EASO contribution, the Member States will then be able to make an assessment and take a position on the countries listed in the Annex to the proposal. On the Presidency text, considering the fact that a very clear qualified majority can support it at the level of JHA Counsellors, the Presidency considers that the current compromise represents a fair and balanced approach taking into account the diverging views expressed by delegations.

#### I. Assessment of the countries to be included on the EU common list of safe countries of origin

According to a requirement posed by the European Court of Justice, the EU co-legislator should be able to demonstrate that it has carefully assessed the interference of a proposed instrument with the fundamental rights enshrined in the EU Charter of Fundamental Rights and that it has explored alternative ways to attain the pursued objective, which would be less restrictive of the fundamental rights<sup>3</sup>. To meet this requirement, the Council (as well as the European Parliament) should perform an assessment of the countries in the Annex of this legislative proposal. In such a way, the Council will be able to determine whether the proposal to put these countries on the EU list is warranted in light of the situation of fundamental rights in those countries and compatible with the requirements listed in the Asylum Procedures Directive.

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<sup>2</sup> EUCO 28/15

<sup>3</sup> Based on the Court Ruling *Schecker* 9293/09, and Annex 4 of the Guidelines established by FREMP, adopted by Coreper in November 2014.

In order to allow the Council to be able to conduct such a thorough assessment, delegations agreed that the European Asylum Support Office (EASO) should be requested to submit an expert contribution on the countries currently included in the Annex to the Commission proposal. EASO will be requested to present background information and more detailed information on topics relevant for international protection status determination with regard to asylum seekers from those countries included in the Annex and relevant for an assessment of the applicability of the safe country of origin concept to these countries.

## II. Current compromise proposal

The current Presidency compromise proposal touches on several elements:

### 1. Consequences of a suspension of a third country from the EU list (Article 3)

During the above-mentioned discussions, delegations examined thoroughly the consequences of a suspension of a third country from the EU list. While a country on the list is suspended, Member States may not apply the principle of 'safe country of origin' to that country, nor are they allowed to place that country on the national list. As part of the compromise proposal, the duration of the suspension has been limited to six months (Article 3(2)). Moreover, it is proposed that within three months after the suspension, the Commission shall submit a legislative proposal to amend the Regulation in order to remove the third country in question from the EU list (Article 3(3)). Only under this condition will the Commission have the possibility of extending the validity of the delegated act for a period of six months and renew this extension once (Article 3(3a)). Additionally, the European Parliament and the Council can object to each delegated act and to its extensions within one month after receiving notification by the Commission (Article 3(7)).

The Presidency is of the view that the consequences of a suspension of a third country from the EU list, as suggested in the compromise proposal appearing in the Annex II to this note, are well balanced and there is little scope for additional compromise. Further shortening the time of suspension and its extensions may not prove practical. Additionally, the ability to object to a delegated act for suspension or its extensions keeps Member States in control of the process in case of subsequent changes in the situation of that country. Moreover, the Commission will be obliged to propose an amendment to the Regulation in a sufficiently short period of time following the suspension.

2. Relation between the EU list and national lists once a third country has been removed from the EU list - Article 4(2).

Following the removal of a country from the EU list, Member States shall in principle not add that country to their national lists. However, in order to address the fact that the situation in a particular third country can change significantly over a relatively short period of time, it was suggested that Member States should have the possibility to reintroduce those third countries on their national lists under certain conditions.

The original proposal by the Commission did not contain any link between the national and EU lists of safe countries of origin. An earlier compromise proposal gave the Commission a power of objection *ad infinitum*, essentially creating a 'blacklist of countries', which once had been on the EU list of safe countries and were removed, but could never be put back on a national list without Commission approval. Some delegations could not agree to this suggestion arguing that Member States should regain full competence to establish their own national list after a country has been removed from the EU list, and oppose the Commission's right of objection. On the other hand, this solution would lead to the other extreme, where a Member State could add a country to its national list immediately after it was removed from the EU list. This possibility would turn the EU list into a hollow shell. As a compromise, and in order to acknowledge the necessity of having a link between the EU and national lists, the Presidency proposes the following compromise:

- If a Member State wishes to include a specific third country on its national list of safe countries of origin after this country was removed from the EU list, the Commission has the power to object to that inclusion during the first two years after it was removed from the EU list. However, the Commission has to object within the three months following the date of notification by the Member State to the Commission that it will add the third country to its national list.
- If a Member State wishes to include a third country on its national list of safe countries of origin, after a period of two years after it was removed from the EU list, the Member State shall only be required to consult the Commission.

The Presidency considers that the current compromise represents a fair and balanced approach taking into account the diverging views expressed by delegations and the Commission.

Furthermore, it also takes into account that Member States' right to reintroduce a third country on its national list should be subject to a certain level of scrutiny by the EU during a reasonable period of time after its removal. By limiting this period to two years, the concerns expressed by some Member States are duly taken into account.

3. As a result of legal and language review, some other changes have been introduced compared to the previous version of the proposal, most notably:
  - A paragraph that had already been included in an earlier draft of the document, obliging the Commission to continuously monitor the situation in a suspended third country in order to evaluate the relevance of that suspension, appears now in Article 3(2). Originally, this text was placed in Article 4(2), paragraph 1(a). However, after further reflection, it was found that this requirement fits better in Article 3(2) as that article deals with suspension.
  - As discussed at the JHA Counsellors meeting of 22 February, recital (16) has been aligned with the text of Turkey's Negotiating Framework.
  - As this Regulation is inextricably linked to the application of the Asylum Procedure Directive 2013/32/EU, Member States which are not bound by or subject to the application of that Directive cannot take part in the adoption of this Regulation.

## Conclusion:

In view of the above, the Presidency invites Coreper to endorse the compromise proposal as set out in Articles 3 and 4 as described above (Annex II). It is important to note that the amendments proposed should be considered jointly as a single compromise proposal.

Therefore, Coreper is requested:

- On the basis of Article 19(7)(h) of the Council's Rules of Procedure, with reference to Article 4 letters a), b) and d) of Regulation (EU) 439/2010 of 19 May 2010 establishing a European Asylum Support Office, to agree to invite EASO to prepare an expert contribution on the countries currently included in the Annex to the Commission proposal, as specified in the draft letter of the Chairman of Coreper to the Executive Director of EASO (Annex I).
- To reach an agreement on the compromise proposals, as outlined above, with a view to granting a mandate for negotiations with the European Parliament, allowing the Presidency to start negotiations on the text of the proposal, excluding the Annex to the proposal and corresponding recitals, with the European Parliament as soon as possible (Annex II).

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Mr Jose Carreira  
Executive Director ad interim  
European Asylum Support Office (EASO)  
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Winemakers Wharf  
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MRS 1917  
MALTA

Subject:

***A request for a contribution on the countries in the Western Balkan and Turkey***

***Commission proposal for a Regulation establishing an EU common list of safe countries of origin (COM(2015) 452 final; 2015/0211 (COD))***

Dear Mr CARREIRA,

On the basis of Article 19(7)(h) of the Council's Rules of Procedure, with reference to Article 4 letters a), b) and d) of Regulation (EU) 439/2010 of 19 May 2010 establishing a European Asylum Support Office, and following a decision to that effect of the COREPER of 23 March 2016, I have the pleasure to request an expert contribution from the European Asylum Support Office on the countries currently included in the annex of the Commission proposal referred to in this letter.

The proposed Regulation is based on Article 78(2)(d) of the Treaty on the Functioning of the European Union (TFEU), which is the legal basis for measures on common procedures for the granting and withdrawing of uniform asylum and subsidiary protection status. The proposal aims at establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU and amends this Directive, which was adopted on the basis of Article 78(2)(d) TFEU.

In general, we would like to request background information and more detailed information on topics relevant for international protection status determination with regard to asylum seekers from those countries included in the annex of the proposal and relevant for an assessment of the applicability of the safe country of origin concept, as described in the Asylum Procedures Directive, to these countries.

This contribution would be of utmost value for the Council of the European Union in the framework of the ongoing legislative process regarding the abovementioned Commission proposal for a Regulation establishing an EU common list of safe countries of origin.

I would be grateful if the EASO could address these issues as soon as possible, with due respect of the EASO country of origin information report methodology, in view of the on-going procedures in the Council of the European Union.

I thank you for your support and good cooperation.

Yours sincerely,

**Ambassador Pieter de Gooijer**

Chairman of Committee of Permanent Representatives of Council of the European Union

Permanent Representative of the Kingdom of the Netherlands to the European Union



Draft

**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 on common procedures for granting and withdrawing international protection, and amending Directive 2013/32/EU**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> J.O. C 71, 24.02.2016 p.82

Whereas:

- (1) Directive 2013/32/EU of the European Parliament and of the Council<sup>2</sup> enables Member States to apply specific procedural rules, in particular accelerated and border procedures, in well-defined circumstances where an application for international protection is likely to be unfounded, including where the applicant is a national of a country that has been designated as a safe country of origin by national law and that, in addition, may be considered as safe for the applicant concerned in light of his or her particular circumstances. The same rules can be applied in the case of stateless persons in relation to third countries in which they were formerly habitually resident.
- (2) Directive 2013/32/EU sets out common criteria for the designation of safe third countries of origin at national level. However, only some Member States have designated in their national law safe countries of origin, which means that not all Member States currently can make use of the related procedural facilities provided for in that Directive. In addition, due to existing divergences between the national lists of safe countries of origin that have been adopted by the Member States, which result from differences in the assessment of the safety of certain third countries or from differences in the nature of the flows of third country nationals they are facing, the concept of safe country of origin as defined in Directive 2013/32/EU is currently not always applied by the Member States in respect of the same third countries.

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<sup>2</sup> Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (OJ L 180, 29.6.2013, p. 60).

- (3) In light of the very sharp increase since 2014 in the number of applications for international protection made in the Union and the resulting unprecedented pressure on Member States' asylum systems, the Union acknowledged the need to strengthen the application of the safe country of origin provisions of Directive 2013/32/EU, as an essential tool to support the swift processing of applications that are likely to be unfounded. In particular, in its conclusions of 25 and 26 June 2015, the European Council referred, in relation to the need to accelerate the treatment of asylum applications, to the intention of the Commission as set out in its Communication on a European Agenda on Migration to strengthen these provisions, including the possible establishment of an EU common list of safe countries of origin. Moreover, the Justice and Home Affairs Council in its conclusions on safe countries of origin of 20 July 2015 welcomed the intention of the Commission to strengthen the safe countries of origin provisions in Directive 2013/32/EU, including the possible establishment of an EU common list of safe countries of origin.

- (4) An EU common list of safe countries of origin should be established on the basis of the common criteria set out in Directive 2013/32/EU as it will facilitate the use by all Member States of the procedures linked to the application of the safe country of origin concept and, thereby, increase the overall efficiency of their asylum systems as concerns applications for international protection which are likely to be unfounded. The establishment of an EU common list of safe countries of origin will also address some of the existing divergences between Member States' national lists of safe countries of origin, whereby applicants for international protection originating from the same third countries are not always subject to the same procedures in all Member States. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those appearing on the EU common list as safe countries of origin, the establishment of such a common list will ensure that the concept is applied by all Member States in a uniform manner in relation to applicants whose countries of origin are on the common list. This will facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. In that context, the possibility of future further harmonisation should be considered after a period of three years following the entry into force of this Regulation, on the basis of a report to be presented by the Commission.
- (5) The provisions of Directive 2013/32/EU related to the application of the safe country of origin concept should be applicable in relation to third countries that are on the EU common list of safe countries of origin established by this Regulation. This means, in particular, that the fact that a third country is on the EU common list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country and therefore does not dispense with the need to conduct an appropriate individual examination of the application for international protection. In addition, it should be recalled that, where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.

- (6) The Commission should regularly review the situation in third countries that are on the EU common list of safe countries of origin. In case of sudden change for the worse in the situation of a third country on the EU common list of safe countries of origin, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of suspending the presence of this third country from the EU common list of safe countries of origin for a period of six months where the Commission considers, on the basis of a substantiated assessment, that the conditions set by Directive 2013/32/EU for regarding a third country as safe country of origin are no longer met. Moreover, in this case, the Commission should propose an amendment to remove this third country from the EU common list of safe countries of origin within 3 months of the adoption of delegated act suspending the third country. For the purpose of this substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal including in particular, its Annual Progress Reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service (EEAS) and the information from Member States, the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe and other relevant international organisations. The Commission should be able to extend the suspension of the presence of a third country from the EU common list of safe countries of origin for a period of six months, with a possibility to renew that extension once. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (6a) When the period of validity of the delegated act and its extensions has expired, without a new delegated act being adopted, the third country should no longer be suspended from the EU common list of safe countries of origin. This shall be without prejudice to any proposed amendment for the removal of the third country from the list.
- (6b) The Commission should regularly review the situation in third countries that have been removed from the EU common list of safe countries of origin, including where a Member State notifies the Commission that it considers, based on a substantiated assessment, that, following changes in the situation of that third country, it fulfils again the conditions set out in Directive 2013/32/EU for being designated as safe. In such a case, Member States could only designate that third country as a safe country of origin at the national level as long as the Commission does not raise objections to that designation within a period of two years after the date of removal of that third country from the EU list<sup>6</sup>. Where the Commission considers that these conditions are fulfilled, it may propose an amendment to the EU common list of safe countries of origin so as to add the third country to the list.
- (7) Following the conclusions on safe countries of origin of the Justice and Home Affairs Council of 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, EASO organised on 2 September 2015 an expert-level meeting with the Member States, where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo\*, the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning of Directive 2013/32/EU.

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<sup>6</sup> FR reservation on the Commission's right to object. COM opposes any limits to its right to object.

\* This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

- (8) In accordance with Directive 2013/32/EU, a country is considered as a safe country of origin 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 and consistently no persecution as defined in Article 9 of Directive 2011/95/EU of the European Parliament and of the Council<sup>7</sup>, 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.
- (9) Based on a range of sources of information, including in particular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations, a number of third countries are considered to qualify as safe countries of origin.

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<sup>7</sup> Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p. 9).

- (10) [As regards Albania, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in four out of 150 applications. There are no indications of any incidents 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. In 2014, Member States considered that 7,8 % (1040) of asylum applications of citizens from Albania were well-founded. At least eight Member States have designated Albania as a safe country of origin. Albania has been designated as a candidate country by the European Council. At the time of designation, the assessment was that Albania fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Albania will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.]



- (11) [As regards Bosnia and Herzegovina, its Constitution provides the basis for the sharing of powers between the country's constituent peoples. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in five out of 1196 applications. There are no indications of any incidents 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. In 2014, Member States considered that 4,6 % (330) of asylum applications of citizens from Bosnia and Herzegovina were well-founded. At least nine Member States have designated Bosnia and Herzegovina as a safe country of origin.]

- (12) [As regards the former Yugoslav Republic of Macedonia, the legal basis for protection against persecution and mistreatment is adequately provided by principle substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in six out of 502 applications. There are no indications of any incidents 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. In 2014, Member States considered that 0,9 % (70) of asylum applications of citizens of the former Yugoslav Republic of Macedonia were well-founded. At least seven Member States have designated the former Yugoslav Republic of Macedonia as a safe country of origin. The former Yugoslav Republic of Macedonia has been designated as a candidate country by the European Council. At the time of designation, the assessment was that the former Yugoslav Republic of Macedonia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. The former Yugoslav Republic of Macedonia will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.]

- (13) [As regards Kosovo\*, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation. The non-accession of Kosovo\* to relevant international human rights instruments such as the ECHR results from the lack of international consensus regarding its status as a sovereign State. There are no indications of any incidents 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. In 2014, Member States considered that 6,3 % (830) of asylum applications of citizens of Kosovo\* were well-founded. At least six Member States have designated Kosovo\* as a safe country of origin.]
- (13a) [This Regulation is without prejudice to Member States' position on the status of Kosovo, which will be decided in accordance with their national practice and international law. In addition, none of the terms, wording or definitions used in this Regulation constitute recognition of Kosovo by the Union as an independent State nor does it constitute recognition by individual Member States of Kosovo in that capacity where they have not taken such a step. In particular, the use of the term "countries" does not imply recognition of statehood.]

- (14) [As regards Montenegro, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in one out of 447 applications. There are no indications of any incidents 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. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro were well-founded. At least nine Member States have designated Montenegro as a safe country of origin. Montenegro has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Montenegro fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Montenegro will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.]

- (15) [As regards Serbia, the Constitution provides the basis for self-governance of minority groups in the areas of education, use of language, information and culture. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 16 out of 11 490 applications. There are no indications of any incidents 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. In 2014, Member States considered that 1,8 % (400) of asylum applications of citizens from Serbia were well-founded. At least nine Member States have designated Serbia as a safe country of origin. Serbia has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Serbia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Serbia will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.]

- (16) [As regards Turkey, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 94 out of 2899 applications. There are no indications of any incidents 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. In 2014, Member States considered that 23,1 % (310) of asylum applications of citizens of Turkey were well-founded. One Member State has designated Turkey as a safe country of origin. Turkey has been designated as a candidate country by the European Council and negotiations have been opened. At the time of designation, the assessment was that Turkey **sufficiently meets** ~~fulfilled~~ the **political** criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Turkey will have to continue to fulfil those criteria, for becoming a member in line with the recommendations provided in the Annual Progress Report.]
- (17) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

- (18) This Regulation respects the fundamental rights and observes the principles recognised by the Charter of Fundamental Rights of the European Union.
- (19) **As this Regulation is inextricably linked to the application of Directive 2013/32/EU and as the United Kingdom is not bound by or subject to the application of Directive 2013/32/EU, it cannot take part in the adoption of this Regulation and is not bound by it or subject to its application.**
- (20) **As this Regulation is inextricably linked to the application of Directive 2013/32/EU and as Ireland is not bound by or subject to the application of Directive 2013/32/EU, it cannot take part in the adoption of this Regulation and is not bound by it or subject to its application.**
- (21) **As this Regulation is inextricably linked to the application of Directive 2013/32/EU and as Denmark is not bound by or subject to the application of Directive 2013/32/EU, it cannot take part in the adoption of this Regulation and is not bound by it or subject to its application.**

HAVE ADOPTED THIS REGULATION:

*Article 1*

***Subject matter***

This Regulation establishes an EU common list of third countries which shall be regarded as safe countries of origin within the meaning of Directive 2013/32/EU.

## *Article 2*

### ***EU common list of safe countries of origin***

1. Third countries listed in Annex I to this Regulation are safe countries of origin.
2. The Commission shall regularly review the situation in third countries that are on the EU common list of safe countries of origin, based on a range of sources of information, including in particular regular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.
3. Any amendment of the EU common list of safe countries of origin shall be adopted in accordance with the ordinary legislative procedure.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 3 to suspend the presence of a third country from the EU common list of safe countries of origin.<sup>8</sup>

## *Article 3<sup>9</sup>*

### ***Suspension of a third country from the EU common list of safe countries of origin in case of sudden change of situation***

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

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<sup>8</sup> **FR** has a reservation on Art. 2(4).

<sup>9</sup> **FR** has a reservation on Article 3.



2. In case of sudden changes in the situation of a third country that 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 Annex I of Directive 2013/32/EU and, if the Commission considers that those conditions are no longer met, shall adopt, in accordance with Article 290 TFUE, a delegated act suspending the presence of that third country from the EU common list of safe countries of origin for a period of six months. **The Commission shall continuously review the situation in that third country taking into account inter alia information provided by the Member States regarding subsequent changes in the situation of that country.**
3. Where the Commission has adopted a delegated act suspending the presence of a third country from the EU common list, it shall within three months after the date of adoption of that delegated act submit a proposal for amendment to this regulation in order to remove that third country from the EU common list of safe countries. If such an amendment has not been submitted prior to this deadline, the delegated act shall cease to have effect.
- 3a Where the Commission has proposed an amendment to this Regulation in order to remove a third country from the EU common list of safe countries of origin, subject to the conditions in paragraph 3, it shall be empowered, on the basis of a substantial assessment referred to in paragraph 2, to extend the validity of the delegated act adopted pursuant to paragraph 2 for a period of six months, with a possibility to renew this extension once. The extensions shall be subject to the same conditions as set out in paragraph 7.

- 4 The power to adopt delegated acts referred to in this Article shall be conferred on the Commission for a period of five-years from [the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
- 5 The delegation of power referred to in this Article may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
- 6 As soon as it adopts a delegated act in accordance with this Article, the Commission shall notify it simultaneously to the European Parliament and to the Council.
- 7 A delegated act, and its extensions, adopted pursuant to this Article shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.

#### *Article 4*

#### ***Amendments to Directive 2013/32/EU***

Directive 2013/32/ EU is amended as follows:

(1) in Article 36, paragraph 1 is replaced by the following:

“1. A third country designated as a safe country of origin in accordance with this Directive by national law or that is on the EU common list of safe countries of origin established by Regulation (EU) No XXXX/2015 of the European Parliament and of the Council<sup>10</sup> [this Regulation] may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

- (a) he or she has the nationality of that country; or
- (b) he or she is a stateless person, was formerly habitually resident in that country, and has not submitted any serious grounds for considering that country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU.”

(2) in Article 37, paragraph 1 is replaced by the following:

“1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin other than those on the EU common list of safe countries of origin established by Regulation (EU) No XXXX/2015 [this Regulation] for the purposes of examining applications for international protection.

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<sup>10</sup> Regulation (EU) No XXXX/2015 of the European Parliament and of the Council of [date] establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU, and amending Directive 2013/32/EU.

- (a) In case the presence of a third country has been suspended from the EU common list of safe countries of origin pursuant to Article 3(2) of that Regulation, Member States shall not designate that country as a safe country of origin at the national level. ~~The Commission shall continuously review the situation in that third country taking into account inter alia information provided by the Member States regarding subsequent changes in the situation of that country.~~
- (b) Where a third country has been removed from the EU common list of safe countries of origin pursuant to Article 2(3) of that Regulation, 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 Annex I of this Directive. The notification shall include a substantiated assessment of the fulfilment by that country of the conditions set out in Annex I of this Directive, including an explanation of the specific changes in the situation of the third country, which make the country fulfil those conditions again. The notifying Member State may only designate that third country as a safe country of origin at the national level as long as the Commission does not object to that designation. The Commission's right of objection shall be limited to the period of two years after the date of removal of that third country from the EU list. 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 Annex I of this Directive. After the period of two years, the Member State shall consult with Commission on the designation of that third country 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 add that third country to the EU common list of safe countries of origin."<sup>11</sup>,

- (3) in Annex I, the title is replaced by the following:

“Designation of safe countries of origin for the purposes of Article 36 and Article 37(1)”.

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<sup>11</sup> **FR** and **COM** have a reservation on Article 4(2)1.(b)

*Article 5*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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[EU common list of safe countries of origin referred to in Article 2

Albania,

Bosnia and Herzegovina,

the former Yugoslav Republic of Macedonia,

Kosovo\*,

Montenegro,

Serbia,

Turkey.]