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NOTE

From: To:	Presidency JHA Counsellors (Asylum)
N° prev. doc.:	CM 3836/25
Subject:	Flash note from the Presidency - JHA Counsellors Asylum on 03.11.25

With a view to the meeting of the JHA Counsellors (Asylum) on 3 November 2025, delegations will find attached the Danish Presidency Flash note.

PRESIDENCY FLASH NOTE

30-10-2025

JHA Counsellors meeting (Asylum)

Dear Colleagues,

We are pleased to welcome you to the JHA Asylum Counsellors meeting to be held on 3 November 2025.

The Presidency's most recent compromise texts on the two legislative proposals concerning the safe country concepts have been published on the delegates portal. We plan to continue the examination of these two proposals with regard in particular to some of the main outstanding matters.

With respect to the proposal on the revision of the safe third country concept, the last discussions on 20 October demonstrated that a number of delegations considered that the proposal's transparency provision should be reinforced, notably as regards cooperation with the Union's neighbouring third countries, which, due to their close geographic proximity to the Union, might raise certain issues as it relates to the management of the external borders of certain Member States.

Taking these views into account, the Presidency considers that this concern could be remedied by inserting a clause requiring the Member States to inform those Member States that share a land border with a third country about negotiations relating to safe third country agreements or arrangements with that third country. The Member State concerned would then be in a position to raise any concerns bilaterally with the negotiating Member State to ensure that its views and positions are duly taken into account.

The Presidency believes that this textual proposal would represent a balanced solution that respect both the manifest sensitivity of Member States when it comes to dialogues with third countries and the concerns of those Member States that may be adversely affected by other Member States' cooperation with neighbouring third countries.

In view of the above considerations, the Presidency would like to receive clear guidance from the Member States on their willingness to accept the above-outlined solution to this issue, including any possible aspects on which flexibility could be given.

As regards the proposal regarding the designation of safe countries of origin at Union level, the content of a 'backstop mechanism' regarding the applicability of the specific exceptions applicable to the EU candidate countries remains one of the main outstanding issues, in particular in relation to exception (a) concerning the existence of a threat of indiscriminate violence in situations of armed conflict. At the JHA Counsellors meeting on 20 October 2025, the Commission reiterated its opposition to the suggestion put forward by the Presidency, taking the view that it does not have the institutional competence to being tasked with assessing whether there exists a situation of war or

peace, which it submits is a matter of EU foreign policy that should be addressed in the Foreign Affairs Council and in the European Council. The Commission instead proposes that in informing the Member States of the fact that exception (a) applies, it base itself on statements or conclusions issued by the Council or the European Council.

The Presidency notes in this respect that the wording of exception (a) as outlined in the present proposal tracks the language of Article 15(c) of the Qualification Regulation, which, in turn, constitutes one of the elements which qualify as 'serious harm' within the meaning of that Regulation, and thus as one of the legal criteria necessary for safe country of origin status under the APR. The scope and ambit of these terms have been further framed by the case law of the Court of Justice of the European Union.

As the Presidency sees it, the above circumstances call for the assessment of whether an EU candidate country falls within these specific circumstances to be based on a determination on the fulfilment of the specific legal conditions applicable, which, in the Presidency's view, can hardly be fully substituted with the reliance on Council conclusions.

As stipulated in Article 62(2) of the APR, the Commission must already monitor the situation in third countries designated as safe countries of origin at Union level and, if required following a substantiated assessment, suspend the designation of a third country as a safe country of origin through a delegated act, as per Article 63 of the APR, where the country no longer meets the conditions for safe country of origin status. In line with that general framework, the Presidency has proposed that the Commission regularly evaluate whether the relevant exceptions for the EU candidate countries apply and inform the Member States to that effect.

While the Presidency acknowledges that such an approach may have implications for the Union's external relations with a particular third country, the Presidency does not consider that, by tasking the Commission with monitoring the safety and human rights situation in a third country, the Council would infringe the principle of conferral of powers in Article 13(2) TEU and, therefore, of the principle of institutional balance.

The Presidency also notes that the draft report of the Rapporteur on the proposal at the European Parliament was recently published, where it is similarly proposed that the 'Commission shall regularly assess whether any of the circumstances … apply to a candidate country for accession to the Union,' and in that case 'issue a formal notification to the Member States.' Thus, the Presidency takes note of a possible nascent shared understanding among the co-legislators of the viability and benefit of having a robust mechanism in place for undertaking the requisite assessments and informing the Member States accordingly.

Nonetheless, with a view to seek a compromise on this issue, the Presidency proposes to remove any explicit references to a Commission '*assessment'* in the recitals. In the view of the Presidency, this could potentially make the text more politically acceptable, while not altering, in substance, the obligation placed upon the Commission.

In order to move forward on this issue, the Presidency seeks confirmation of support from the delegations for maintaining the approach contained in the revised Presidency compromise proposal.

We thank you in advance for your cooperation and we look forward to seeing you at the meeting.

Best regards,

The Danish Presidency Asylum Team.

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