

**5712/04**

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**Interinstitutional File:  
2000/0238 (CNS)**

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**LIMITE**

**ASILE 2**

**NOTE**

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from : Presidency

to : Strategic Committee on Immigration, Frontiers and Asylum

on : 4 February 2004

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No. prev.doc. : 15198/03 ASILE 66 + ADD 1

No. Cion prop. : 10279/02 ASILE 33 + REV 1 (de, en, fr) - COM(2002) 326 final/2

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Subject : Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status  
- Orientation debate on safe countries of origin

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**I. Purpose of the orientation discussion**

The Presidency refers to the decision of Council on 2/3 October 2003 to set up a minimum EU common list of safe third countries of origin, to be adopted if possible at the same time as the Asylum Procedures Directive, that will be binding on all Member States. The Presidency also refers to the report from the Commission Services, which was presented to Council on 28 November 2003, on the position of Member States regarding the determination of countries to be considered as "safe countries of origin" as expressed at the meeting of the Committee for Immigration and Asylum on 27 October 2003.

2. The idea for the establishment of a common list arose from a Joint Statement issued by France, Italy, Germany, the United Kingdom and Spain at the JHA Council of 5/6 June 2003 which called for the *"incorporation into the Directive of the principle of the drawing up and review of a minimum joint list of safe countries of origin"*. The Joint Statement was supported by Austria and a similar Statement was made by the Benelux countries at the meeting. The Joint Statement also contained the agreement of the Member States concerned that *"those countries which may be considered to be safe countries of origin must be identified on the basis of predefined criteria, with due regard for international commitments in the field of asylum and respect for human rights"*.
3. It is the view of the Presidency that the options for the establishment of a minimum common list, in line with the mandate of the Council, are limited having regard to the objective of the Presidency to attempt to reach a general political approach to the Directive by the Tampere/Amsterdam Treaty deadline of 1 May 2004.
4. The Presidency wishes SCIFA to consider a number of strategic questions in relation to carrying the work forward in order to meet the mandate of Council with particular reference to the composition of the list, the working method to be used for this purpose and the designation criteria to be utilised.

## **II. State of play in relation to the establishment of the proposed common list**

5. Following an invitation of the Italian Presidency to assist the Council on this matter, the Commission Services agreed to steer an expert discussion to explore possible common ground on the scope of the list and to identify the issues which needed further examination within the Council. This discussion took place at a meeting of the Committee for Immigration and Asylum on 27 October 2003.

6. The working method adopted by the Commission Services at that meeting focussed on three broad categories of countries for discussion by Member States:
- **Category 1:** EFTA States (Iceland, Liechtenstein, Norway and Switzerland);
  - **Category 2:** countries which are the subject of fairly generalised practice among those Member States who use safe country of origin lists (Bulgaria, Romania, Australia, Canada, Japan, New Zealand, the USA);
  - **Category 3:** additional countries included on some Member States' national lists.
7. The Commission Services report concludes that :
- **Category 1:** there was wide support for the inclusion in the list of these States although some Member States queried the usefulness of doing so particularly as they do not generate large numbers of refugees;
  - **Category 2:** there was wide support for the inclusion of this group although some Member States expressed concerns about the application of the death penalty in some of the States in this group and the fact that they do not generate large numbers of refugees;
  - **Category 3:** there was no consensus on this group of countries without, inter alia, first establishing what designation criteria should be included in Annex II of the Directive.

### **III. Tampere and Amsterdam deadline**

8. The Presidency recalls the declaration of the European Council on 12 December 2003 which, inter alia, reaffirmed the importance of developing a common European policy on asylum and invited the JHA Council to complete its work as soon as possible to ensure that the first phase of the establishment of a European asylum system is fully implemented within the Tampere/Amsterdam deadline.
9. As it will not be possible to have the Directive formally adopted by Tampere/Amsterdam deadline, the aim of the Presidency is to seek to reach agreement on a general approach by that date. Delegations will be aware that the European Parliament must be consulted on the Directive and the proposed common list of safe countries of origin.

10. The Presidency must now decide how work on the establishment of the proposed common minimum list should be taken forward having regard, in particular, to the difficulties in reaching consensus which were identified in the Commission Services report of the meeting of the Committee for Immigration and Asylum on 27 October 2003 and the impending deadline.
11. This work must be undertaken against the background that there is still not full agreement by all Member States on the designation criteria in Annex II of the Directive.

#### **IV. Issues requiring further consideration**

12. Having regard to the decision of Council on 2/3 October 2003 to establish a common minimum list, the Presidency has identified a number of key strategic issues requiring a clear orientation from SCIFA in order that progress can be made. These relate to:
  - a) the composition of the list;
  - b) the working method to be adopted in Council for selecting countries for inclusion on the list; and
  - c) the designation criteria to be used for this purpose.

##### **a) Composition of the list**

13. It is the view of the Presidency, that any common list must provide added value to the current asylum processes of the Member States. Given the proposed mechanism for the establishment of the common list which, inter alia, involves consultation of the European Parliament, and the consequences in the Directive for applicants from safe countries of origin, the Presidency is of the view that there must be a clear motivation for including countries in the common list. Although there would appear to be consensus for the inclusion in the list of countries in categories 1 and 2, they do not generate large numbers of refugees. Moreover, concerns about the application of the death penalty in some of the countries in category 2 have been expressed by some Member States.

*SCIFA is invited to consider the following questions:*

- i) Having regard to the fact that the countries mentioned at categories 1 and 2 do not generate large numbers of refugees, should the proposed common list include the countries listed in category 1 and all or some of the countries listed in category 2?*
- ii) In view of the very tight timescale available to reach agreement on a common list and the lack of consensus indicated in the Commission Services report on the countries mentioned in category 3, should the countries mentioned in categories 1 and 2 represent the entire list?*
- iii) Having regard to the limited timeframe available, should the possibility of reaching agreement on a longer list be explored before 1 May 2004?*
- iv) If SCIFA considers that a longer list should be established, should consideration of potential countries to be included on the list be restricted to countries mentioned in category 3?*

**b) Working method**

- 14. The Presidency believes that the selection of an efficient working method will be critical to completion of work on the selection of countries for inclusion on a common list by the Tampere/Amsterdam deadline.
- 15. Following the mandate of the JHA Council of 2/3 October 2003, the objective has been to establish a minimum common list with a view to a general political approach being agreed at the same time as the Directive. However, given the divergence of views highlighted in the Commission Services report, this will be a difficult task.
- 16. The Presidency suggests that there are two possible options for fora to agree a common list. One forum would be the Asylum Working Party. However, the Presidency considers that this Working Party should concentrate its efforts over the coming months on the forthcoming proposal of the Commission for a Council Decision establishing the European Refugee Fund for the period 2005-2010.

17. The alternative forum, which is considered more appropriate by the Presidency, is the JHA Counsellors on the basis of a mandate arising from the meeting of SCIFA on 3 and 4 February 2004.

*SCIFA is invited to agree that JHA Counsellors should be given a mandate to select potential countries for inclusion on the proposed common list.*

**c) Designation criteria**

18. It is clear that, for a country to be included on a common EU list, it will have to be examined having regard to certain agreed criteria. In addition, consideration will have to be given as to who will carry out the exercise of deciding whether a country or countries meet such criteria. Indeed, the Joint Statement of 5/6 June 2003 by France, Italy, Germany, the United Kingdom and Spain contained agreement that the "*safe countries of origin must be identified on the basis of predefined criteria*".
19. The Presidency would point out that, as a broad consensus has been reached on the designation criteria for safe countries of origin in Annex II of the Directive, subject to reservations from two Member States, these could serve in principle as guidelines for designation of safe countries of origin for inclusion on the common list.

**SCIFA is invited to consider the following questions:**

- i) *Should the criteria in Annex II of the Directive serve in principle as guidelines for designation of safe countries of origin for inclusion on the common list?*
- ii) *Should a Member State who wishes to include one of the countries listed in category 3 on the common list be required to justify that wish at the meeting of JHA Counsellors by, inter alia, providing evidence to show that the country concerned satisfies the designation criteria?*