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Committee on Civil Liberties, Justice and Home Affairs

2015/0211(COD)

13.4.2016

*****I**

DRAFT REPORT

on the 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
(COM(2015)0452 – C8-0270/2015 – 2015/0211(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Sylvie Guillaume

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the 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 (COM(2015)0452 – C8-0270/2015 – 2015/0211(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2015)0452),
 - having regard to Article 294(2) and Article 78(2)(d) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0270/2015),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs and the Committee on Development (A8-0000/2016),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Directive 2013/32/EU sets out common criteria for the designation of safe third countries of origin at national level. However, only certain Member States have designated in their national law safe countries of origin, which means that not all Member States currently can make use

Amendment

(2) Directive 2013/32/EU sets out common criteria for the designation of safe third countries of origin at national level. However, only certain 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 Directive 2013/32/EU. In addition, due to existing divergences between the national lists of safe countries of origin that have been adopted by the Member States, which could 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.

of the related procedural *modalities* provided for in Directive 2013/32/EU. In addition, due to existing divergences between the national lists of safe countries of origin that have been adopted by the Member States, which could 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.

Or. en

Justification

The word ‘facilities’ is not appropriate within the context of asylum procedures (application of Directive 2013/32/EU). The application of the concept of safe countries of origin at national level should rather be referred to as a ‘procedural modality’.

Amendment 2

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) In light of the very sharp increase that has been experienced 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

Amendment

(3) In light of the very sharp increase that has been experienced 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 Migration⁸ 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.

⁸ COM (2015) 240 final, 13.5.2015.

Communication on a European Agenda on Migration⁸ to strengthen these provisions, including the possible establishment of an EU common list of safe countries of origin.

⁸ COM (2015) 240 final, 13.5.2015.

Or. en

Justification

In legislative instruments it is appropriate to refer to the European Council insofar as the latter 'shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof' (Art. 15 TEU). However, references to the Justice and Home Affairs Council are not relevant as they translate the positioning of (only) one of the co-legislators.

Amendment 3

Proposal for a regulation

Recital 4

Text proposed by the Commission

(4) An EU common list of safe countries of origin should be established on the basis of the common criteria set 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 **will** also address some of the existing divergences between Member

Amendment

(4) An EU common list of safe countries of origin should be established on the basis of the common criteria set in Directive 2013/32/EU as it **would** 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 **is intended to** also address some of the existing divergences between

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 the 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 this list. This **will** accordingly facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. In that context, **the possibility to take in the future** further steps of harmonisation **that could lead to the elimination of the need for** national lists of safe countries of origin 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**.

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 the Member States. While Member States should **temporarily** 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 **would** ensure that the concept is applied by all Member States in a uniform manner in relation to applicants whose countries of origin are on this list. This **would** accordingly facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. In that context, **as regards** further steps **towards** harmonisation, national lists of safe countries of origin should **cease to exist** after a period of three years following the entry into force of this Regulation. **The Commission should report to the European Parliament and to the Council on the application of this Regulation in the Member States**.

Or. en

Justification

In order to establish a comprehensive common list of safe countries of origin (SCO) at Union level and thus ensure full harmonisation of the application of the concept, it is essential to foresee -within a reasonable timeframe- the elimination of national lists of SCO. The prevalence of a common list over national lists has been the option privileged by the European Parliament in its First Reading Position of 6 April 2011 on the proposal for a directive on minimum standards on procedures in Member States for granting and withdrawing international protection (recast).

Amendment 4

Proposal for a regulation Recital 5

Text proposed 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 established by this Regulation. This means, in particular, that the circumstance 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 does not dispense therefore 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.

Amendment

(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 established by this Regulation. This means, in particular, that the circumstance 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 does not dispense therefore with the need to conduct an appropriate individual examination of the application for international protection ***in accordance with the procedural safeguards laid down in Directive 2013/32/EU***. 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.

Or. en

Justification

The establishment of an EU common list entails an increased responsibility of the EU not only for the assessment of the countries selected for such list, but also for ensuring that safeguards currently provided in the Asylum Procedures Directive are duly applied and sufficient.

Amendment 5

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) The EU's common list of safe countries of origin should not have the aim of reducing the number of asylum seekers from countries which combine a

large number of applications with a low recognition rate. Inclusion on this list should be based solely on an assessment of whether a country's situation conforms to the definition in Directive 2013/32/EU.

Or. fr

Justification

In its explanatory memorandum, the Commission states that 'priority will be given to third countries from which originate a significant number of applicants for international protection in the EU', thus adding a criterion linked to the regulation of migratory flows, even though the definition in Directive 2013/32/EU (hereinafter 'the Asylum Procedures Directive') contains no such criterion.

Amendment 6

Proposal for a regulation

Recital 6

Text proposed by the Commission

(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, 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 for a period of one year where it 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. 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

Amendment

(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, 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 for a period of one year where it 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. 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 for a period of maximum one year, where it has proposed an amendment to this Regulation in order to remove this third country from the EU common list of safe countries of origin. 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.

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, and national or international non-governmental* organisations. The Commission should be able to extend the suspension of the presence of a third country from the EU common list for a period of maximum one year, where it has proposed an amendment to this Regulation in order to remove this third country from the EU common list of safe countries of origin. 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.

Or. en

Justification

A wide range of sources is to be used when assessing the situation in countries of origin to be considered as safe countries of origin. To meet the requirements of the case law, the list of sources of information should include explicitly, i.a., non-governmental organisations. Similarly, Article 4(a) of the EASO Regulation requires EASO, in the context of Country of Origin Information, to make use of 'all relevant sources of information, including information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union'.

Amendment 7

Proposal for a regulation

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In order to meet the need to consult a wide range of sources of information and

to access expert advice, an advisory body on safe countries of origin should be established and assist the Commission in its task of monitoring the EU common list of safe countries of origin.

Or. en

Justification

It is essential to require expert advice on whether the countries on the list or to be proposed for the list meet the designation criteria. By the establishment of a specific Advisory Body, the methodology for adding, removing or suspending third countries at/from the EU common list would thus be reinforced and ensure better assessment of the situation of the countries concerned.

Amendment 8

**Proposal for a regulation
Recital 6 b (new)**

Text proposed by the Commission

Amendment

(6b) If a third country is suspended or removed from the EU common list of safe countries, Member States should not designate that country as a safe country of origin at the national level.

Or. en

Justification

In order to establish a comprehensive common list of safe countries of origin at Union level and thus ensure full harmonisation of the application of the concept, it is essential to foresee - within a reasonable timeframe- the elimination of national lists of safe countries of origin. In the meantime however, the link between the national and EU lists of safe countries of origin should be further clarified.

Amendment 9

**Proposal for a regulation
Recital 7**

Text proposed by the Commission

Amendment

*(7) Following the conclusions on safe countries of origin of the Justice and Home Affairs Council of 20 July 2015, where Member States have 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*⁹, the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning Directive 2013/32/EU.*

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*⁹ * 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.*

Or. en

Justification

References to the JHA Council are not relevant as they translate the positioning of (only) one of the co-legislators. Besides, at this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 10

Proposal for a regulation

Recital 9

Text proposed by the Commission

Amendment

(9) Based on a range of sources of

(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.

information, including in particular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe *and* other relevant international *organisations, and national or international non-governmental* organisations, a number of third countries are considered to qualify as safe countries of origin.

Or. en

Justification

A wide range of sources is to be used when assessing the situation in countries of origin to be considered as safe countries of origin. To meet the requirements of the case law, the list of sources of information should include explicitly, i.a., non-governmental organisations. Similarly, Article 4(a) of the EASO Regulation requires EASO, in the context of Country of Origin Information, to make use of ‘all relevant sources of information, including information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union’.

Amendment 11

Proposal for a regulation

Recital 10

Text proposed by the Commission

Amendment

(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 refoulement of its own citizens. 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

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European Council. At that time the assessment was that Albania fulfilled the 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 and Albania will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 12

Proposal for a regulation

Recital 11

Text proposed by the Commission

Amendment

(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

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any incidents of refoulement of its own citizens. 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.

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 13

Proposal for a regulation Recital 12

Text proposed by the Commission

Amendment

(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 refoulement of its own citizens. 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

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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 that time 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 stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and the former Yugoslav Republic of Macedonia will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 14

Proposal for a regulation Recital 13

Text proposed by the Commission

Amendment

(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*

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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 refoulement of its own citizens. 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.*

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 15

Proposal for a regulation Recital 14

Text proposed by the Commission

Amendment

(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 1 out of 447 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro

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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 that time the assessment was that Montenegro fulfilled the 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 and Montenegro will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 16

Proposal for a regulation

Recital 15

Text proposed by the Commission

Amendment

(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-

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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 refoulement of its own citizens. 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 that time the assessment was that Serbia fulfilled the 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 and Serbia will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 17

Proposal for a regulation Recital 16

(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 refoulement of its own citizens. 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 that time the assessment was that Turkey fulfilled the 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 and Turkey will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report. **deleted**

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

Amendment 18

Proposal for a regulation Article 1 – paragraph 1

Text proposed by the Commission

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.

Amendment

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. ***When seeking international protection, nationals of third countries that are on the EU common list of safe countries of origin established by this Regulation shall benefit from all relevant procedural guarantees and safeguards provided for in Directive 2013/32/EU.***

Or. en

Justification

The establishment of an EU common list entails an increased responsibility of the EU not only for the assessment of the countries selected for such list, but also for ensuring that safeguards currently provided in the Asylum Procedures Directive are duly applied and sufficient.

Amendment 19

Proposal for a regulation Article 2 – paragraph 2

Text proposed by the Commission

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.

Amendment

2. The Commission shall regularly review the situation in third countries that are on the EU common list of safe countries of origin ***or suspended from that list in accordance with Article 3,*** 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, and national or***

Justification

A wide range of sources is to be used when assessing the situation in countries of origin to be considered as safe countries of origin. To meet the requirements of the case law, the list of sources of information should include explicitly, i.a., non-governmental organisations. Similarly, Article 4(a) of the EASO Regulation requires EASO, in the context of Country of Origin Information, to make use of 'all relevant sources of information, including information gathered from governmental, non-governmental and international organisations and the institutions and bodies of the Union'. The regular review on the countries on the EU list should include also review of the countries suspended from the list. If there is no formal procedure to remove the third country from the list at the end of the one-year suspension, that third country will (automatically) be added to the EU common list again. It is therefore essential to foresee a regular review of the countries suspended from that list.

Amendment 20

Proposal for a regulation
Article 2 – paragraph 3

Text proposed by the Commission

3. Any amendment of the EU common list of safe countries of origin shall be adopted in accordance with the ordinary legislative procedure.

Amendment

3. Any amendment of the EU common list of safe countries of origin shall be adopted in accordance with the ordinary legislative procedure.

Before making any proposal of adding a new third country to the EU common list of safe countries of origin, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the criteria set in Annex I of Directive 2013/32/EU and consult the Advisory Body on Safe Country of Origin Information in accordance with the procedure laid down in Article 3b(3).

Assessments of whether a country is a safe country of origin conducted in accordance with this article shall be 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, and national or international non-governmental organisations.

Or. en

Justification

The Commission did not foresee a clear methodology in the process of adopting/amending the EU common list. It is essential to provide for a wide range of sources of information to be consulted by the Commission and to require expert advice on whether the countries on the list or to be proposed for the list meet the designation criteria.

Amendment 21

Proposal for a regulation

Article 2 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Where sudden changes in the situation of a third country that is on the EU common list of safe countries of origin arise and imperative grounds of urgency so require, the procedure provided for in Article 3a(new) shall apply to delegated acts adopted pursuant to this Article.

Or. en

Justification

This amendment seeks to avoid any grey zone or delays in decision-making when sudden changes arise in the situation of a third country that is on the EU common list of safe countries of origin.

Amendment 22

Proposal for a regulation

Article 3 – title

Text proposed by the Commission

Amendment

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

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

Or. en

Justification

Article 3 does not deal with removal of a third country from the EU common list, but rather with suspension of that country from that list in case of sudden change of situation.

Amendment 23

Proposal for a regulation
Article 3 – paragraph 2

Text proposed by the Commission

Amendment

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 those conditions are no longer met, shall adopt, in accordance with Article 290 TFEU, a Decision suspending the presence of that third country from the EU common list for a period of one year.

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 ***immediately*** conduct a substantiated assessment of the fulfilment by that country of the conditions set in Annex I of Directive 2013/32/EU, ***based on the sources of information listed in Article 2(2) and in accordance with the consultation obligation established in Article 3b(3)*** and, if those conditions are no longer met, shall adopt ***as soon as possible***, in accordance with Article 290 TFEU, a Decision suspending the presence of that third country from the EU common list for a period of one year.

As soon as possible after it becomes aware of the change in situation and in any event before adopting the decision suspending inclusion of that third country from the EU common list, the Commission shall inform the Member States and recommend to them not to apply the safe country of origin concept to that third country at the national level.

Justification

This amendment seeks to avoid any grey zone or delays in decision-making when sudden changes arise in the situation of a third country that is on the EU common list of safe countries of origin.

Amendment 24

Proposal for a regulation
Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Urgency procedure

1. Delegated acts adopted under this Article shall enter into force without delay and shall apply as long as no objection is expressed in accordance with paragraph 2.

2. The notification of a delegated act to the European Parliament and to the Council shall state the reasons for the use of the urgency procedure.

2. Either the European Parliament or the Council may object to a delegated act in accordance with the procedure referred to in Article 3(7). In such a case, the Commission shall repeal the act without delay following the notification of the decision to object by the European Parliament or by the Council.

Or. en

Justification

This amendment seeks to avoid any grey zone or delays in decision-making when sudden changes arise in the situation of a third country that is on the EU common list of safe countries of origin.

Amendment 25

Proposal for a regulation Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b

The Advisory Body on Safe Country of Origin Information

- 1. A body known as the Advisory Body on Safe Country of Origin Information shall be established. This body shall be permanently composed of two representatives of UNHCR and two representatives of EASO. For the purpose described in paragraph 3, the permanent members shall invite other relevant independent and reliable third parties to participate as non-permanent members. Those third parties shall be individuals or organisations with proven and relevant country-specific and human rights expertise.***
- 2. The advisory body shall evaluate the content of all materials relating to countries designated as safe countries of origin on the EU common list.***
- 3. The Commission shall consult the body referred to in paragraph 1:***
 - when conducting its regular reviews of the situation in third countries that are on the EU common list of safe countries of origin as referred to in Article 2(2);***
 - when amending the EU common list of safe countries of origin as referred to in Article 2(3);***
 - in cases of sudden changes in the situation in a third country that is on the EU common list of safe countries of origin as referred to in Article 3(2) pointing towards a potential suspension of that country from the EU common list of safe countries of origin.***
- 4. On their own initiative, one or more members of the advisory body referred to***

in paragraph 1 may alert the Commission in case of sudden changes in the situation of a third country that is on the EU common list of safe countries of origin as referred to in Article 3(2), which could be considered serious enough to justify the suspension of that country from the EU common list of safe countries of origin. One or more members of the advisory body can recommend to the Commission to conduct a substantiated assessment of the fulfilment by that country of the criteria set out in Annex I of Directive 2013/32/ EU where they have information that those criteria may no longer be met. Upon receiving such a recommendation, the Commission shall immediately inform the European Parliament and the Council. The Commission shall inform the advisory body of whether it intends to conduct the recommended assessment. If the Commission decides not to conduct that assessment, it shall provide a substantiated explanation in this regard, which shall be submitted to the European Parliament and to the Council.

5. The Commission shall be empowered to adopt delegated acts in accordance to Article 3 concerning the functioning of the advisory body referred to in paragraph 1.

Or. en

Justification

It is essential to require expert advice on whether the countries on the list or to be proposed for the list meet the designation criteria. By the establishment of a specific Advisory Body, the methodology for adding, removing or suspending third countries at/from the EU common list, would thus be reinforced and ensure better assessment of the situation of the countries concerned.

Amendment 26

**Proposal for a regulation
Article 4 – paragraph 1 – point 1**

Text proposed by the Commission

Amendment

From ... [three years from the entry into force of this Regulation] only a safe country of origin 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* shall be considered to be a safe country of origin within the meaning of this Directive.

Or. en

Justification

In order to establish a comprehensive common list of safe countries of origin at Union level and thus ensure full harmonisation of the application of the concept, it is essential to foresee - within a reasonable timeframe- the elimination of national lists of safe countries of origin.

Amendment 27

Proposal for a regulation

Article 4 – paragraph 1 – point 2

Directive 2013/32/ EU

Article 37– paragraph 1

Text proposed by the Commission

Amendment

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

1. ***Until ... [three years from the entry into force of this Regulation],*** 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 xxx/2015 for the purposes of examining applications for international protection.

1a. Where 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.

1b. Where a third country has been removed from the EU common list of safe countries of origin pursuant to Article 2(3), a Member State may notify the Commission where it considers that, following changes in the situation of that third country, it once again fulfils the criteria set out in Annex I to this Directive for being included in the EU common list of safe countries of origin.

The Commission shall examine any such notification by a Member State and if appropriate, submit a proposal to the European Parliament and to the Council to amend the EU common list of safe countries of origin accordingly.

If the Commission decides not to submit such a proposal, Member States shall not designate that country as a safe country of origin at national level.

Or. en

Justification

In order to establish a common list of safe countries of origin (SCO) at Union level and ensure full harmonisation of the application of the concept, it is essential to foresee -within a reasonable timeframe- the elimination of national lists of SCO. In the meantime, the link between the national and EU lists of SCO should be further clarified. In case of a suspension of a third country from the EU list, Member States (MS) shall not apply the principle of 'SCO' to that country, nor are they allowed to place that country on the national list. In case of a removal of a country from the EU list, MS shall not add that country to their national list. However, in order to address the fact that the situation in a particular third country can change significantly, the Commission shall examine any notification by a MS to re-include that third country in the EU list.

Amendment 28

Proposal for a regulation Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Monitoring and evaluation

By ... [two years after the date of entry into force of this Regulation], the Commission shall submit a report to the European Parliament and to the Council on the implementation of this Regulation and, where appropriate, shall propose the necessary amendments. By ... [18 months after the date of entry into force of this Regulation], Member States shall forward to the Commission all information appropriate for the preparation of that report. After it has submitted the report, the Commission shall report to the European Parliament and to the Council on the application of this Regulation.

As part of the report, the Commission shall report on the methodology it has used to assess the situation in third countries included in the EU common list or the potential inclusion or suspension of such countries from the list. It shall also report on the implementation of procedural safeguards for asylum seekers originating from a country on the EU common list of safe countries of origin.

Or. en

Justification

The establishment of an EU common list entails an increased responsibility of the EU not only for the assessment of the countries selected for such list, but also for ensuring that safeguards currently provided in the Asylum Procedures Directive are duly applied and sufficient.

Amendment 29

Proposal for a regulation Annex I

Text proposed by the Commission

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

Albania,

Amendment

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

*Bosnia and Herzegovina,
the former Yugoslav Republic of
Macedonia,
Kosovo*¹¹ ,
Montenegro,
Serbia,
Turkey.*

*¹¹ * 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.*

Or. en

Justification

At this stage, consideration of the annex and in particular of the countries listed by the Commission as safe countries of origin has been postponed. Both Parliament and Council are formally requesting some further and updated elements from the European Asylum Support Office to better assess the situation in the Western Balkan countries and in Turkey -the countries listed in Annex I. Pending these expert assessments, the co-legislators are not able to express their position on these parts. The co-legislators aim at a partial position not including Annex I and the corresponding Recitals in the text. This will allow Parliament and Council to start negotiating on the unrelated parts of the text and to complete their position and mandate once the expert reports will be ready and transmitted.

EXPLANATORY STATEMENT

The Commission proposal: principles and objectives

On 13 May 2015 the Commission presented a comprehensive European Agenda on Migration, outlining, in addition to immediate measures, further initiatives that need to be taken to provide structural solutions for better managing migration in all its aspects. As part of the structural initiatives considered, the Commission stressed the need to strengthen the common European asylum system and adopt a more effective approach to abuses. In this context it proposed on 9 September 2015 to strengthen the ‘safe countries of origin’ provisions of Directive 2013/32/EU on common procedures for granting and withdrawing international protection (hereinafter ‘the Asylum Procedures Directive’).

As well as endorsing the principle of a common list of safe countries of origin, the proposal places a number of countries on this list straight away (Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey). The Commission states that its proposal has three objectives: 1) to increase the overall efficiency of asylum systems; 2) to discourage attempts to abuse the common European asylum system and seek to ensure, on the other hand, that the Member States devote more resources to persons in need of protection; 3) to reduce the existing divergences between Member States’ national lists of safe countries of origin, thereby facilitating convergence in the application of procedures.

General remarks on the concept of safe countries of origin and its application

To begin with, the rapporteur wishes to dissipate some of the confusion and correct misconceptions surrounding the concept of safe countries of origin itself.

First of all, if an asylum seeker’s country of origin is considered to be a safe country of origin, this does not mean that his application will not be considered or that he will be immediately deported. This in no way establishes an absolute guarantee of safety for the applicant and does not dispense therefore with the need to conduct an appropriate individual examination of his application, in accordance with the Asylum Procedures Directive and the relevant procedural safeguards.

Furthermore, the term ‘safe country of origin’ should not be confused with the term ‘safe third country’. The two concepts apply to two distinct groups (the former to nationals of a country designated as a safe country of origin, the latter to nationals of countries other than those designated as safe third countries), they follow different rules and have different procedural safeguards.

Finally, while a European list may make it easier for all Member States to make use of the concept of safe countries of origin, the Asylum Procedures Directive already enables them to adopt this procedural tool. Thus they can already fast-track applications from the nationals of safe countries of origin or consider substantive applications at the border. That being so, while acknowledging the importance of this tool in the search for common solutions, we should not overstate this proposal’s potential in the context of the current migratory crisis. The added value of a European list of safe countries of origin should be assessed in the light of the

overall effective management of EU asylum systems and the full implementation of the provisions of the common European asylum system.

Questions and reservations concerning the Commission proposal

As a step on the way towards a common European asylum system, the Commission's harmonising approach should be welcomed. However, the rapporteur would like to ask some questions and express some reservations:

1) on the harmonising impact of this proposal

The adoption of a common list of safe countries of origin will not necessarily lead to greater harmonisation, as it allows this European list to coexist with Member States' national lists. However, if the Commission is considering the possibility, in the future, of taking further harmonising measures that could result in dispensing with the need for national lists, its proposal does not specifically say so. Neither does it define clearly how the national lists would interact with the common list. Finally, it does not propose any adjustments to remedy the existing divergences between national lists.

2) on the methodology for designating a country as a safe country of origin

The question of methodology is crucial. First of all, as the European Court of Justice requires, it is up to the European co-legislators to show that they have carefully balanced the objectives of the regulation in question, on the one hand, against the fundamental rights enshrined in the Charter of Fundamental Rights of the EU, on the other. Furthermore, as the proposal states, this list of seven countries would only be a preliminary stage, as the Commission proposes to include other third countries later. However, the proposal does not seem to put forward a clear and rigorous methodology for evaluating the situation in third countries, either for the adoption of the list or for its revision. Nor does it provide a reasoned assessment of the situation in the seven countries in question to justify their inclusion on the common list.

3) on the adoption and review process

The proposal does not formally specify how changes to the European list could influence national procedures regarding either the process of suspension or of withdrawal from the list. This lack of legal certainty is compounded by a lack of flexibility in the suspension procedure set out in Article 3.

Gathering information on the countries on the list and improving its structure

In the light of these various observations, the rapporteur proposes an approach which will make it possible both to carry out the essential work of gathering information on the countries on the list, and to improve the structure of the list itself.

1) Vital need for information-gathering and investigation work

In order to carry out an appropriate assessment of the countries listed in the Annex, the European Parliament and the Council have formally asked the European Asylum Support Office (EASO) for additional, updated information on the situation in the countries of the Western Balkans and Turkey. Parliament has sought to complement this information-gathering work by also asking the European Union Agency for Fundamental Rights (FRA) to highlight any implications the proposal has for fundamental rights.

2) A partial position, temporarily disregarding the countries on the list

While awaiting the contributions from EASO, the co-legislators are not in a position to express a view on the parts specifically linked to the seven non-EU countries listed in the Commission proposal as safe countries of origin. This is why the rapporteur has not yet made any comments on the Annex or the recitals relating to it. The Council is taking the same approach. This two-stage approach will enable the co-legislators to begin interinstitutional negotiations on the other parts of the text, and, once the contributions from EASO have been received, to convert their partial position into a complete one.

3) Improving the structure of the list

The rapporteur's amendments seek, logically enough, to reflect the above comments, primarily with a view to:

a) *clarifying the relationship between the European list and the national lists*

To optimise the harmonising effect of the proposal, the rapporteur suggests abolishing the national lists within three years, and, during that period, establishing clearly defined procedures in the event that a country is suspended or withdrawn from the common list.

b) *improving the methodology for the assessment of third countries in the context of the adoption and review process*

As the case law requires, the sources of information referred to in the draft regulation must be supplemented by on-the-ground reports and information supplied by NGOs. Furthermore, the methodology must be improved in order to establish a clear procedure in the event of the list being amended: reasons and justifications should be given for any change to the list, taking account of information supplied by the various relevant actors. To that end the rapporteur proposes the creation of an Advisory Body on Safe Country of Origin Information. This body will comprise both permanent members, including EASO and the UN Refugee Agency, and non-permanent members selected on the basis of their proven country-specific and/or human rights expertise. The body's tasks will be defined at each stage of the designation and list review process. This body will thus make it possible to assess more effectively whether the concept of 'safe country of origin' is applicable to a given third country.

c) *guaranteeing a faster and more flexible mechanism for reviewing the list*

The rapporteur seeks in particular to enhance the flexibility of the procedure for reviewing the list in the event of 'sudden changes in the situation' and thus to avoid overlong response times and prevent a country being inappropriately placed on the list of safe countries of origin.

d) *reaffirming the procedural framework of Directive 2013/32/EU*

The creation of a common list requires not only a reasoned and properly informed evaluation of the situation in the third countries in question but also the full application of the rules laid down in the Asylum Procedures Directive, and in particular of the relevant procedural safeguards. The rapporteur therefore suggests reaffirming the applicable procedural framework and takes the view that it must be implemented by all Member States. Accordingly, within two years from the entry into force of the regulation, the Commission is to draw up a follow-up and assessment report on the implementation of the procedural safeguards under the Asylum Procedures Directive for asylum seekers originating from a country on the common list of safe countries of origin. On the concept of 'safe country of origin' itself, it is useful to note that the inclusion of a country on the common list should be based solely on an assessment of whether the situation in the country meets the criteria set out in the Asylum Procedures Directive.