

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 in accordance with the conditions laid down in Article 38 of the Procedures Directive), 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.