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Delegations will find attached the letter form the European Economic and Social Committee on the above mentioned subject.



European Economic and Social Committee

REX/457
Establishing an EU common
list of safe countries of
origin

Brussels, 10 December 2015

OPINION

of the
European Economic and Social Committee
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) 452 final**

Rapporteur: **José Antonio Moreno Díaz**

On 16 September 2015 and 15 October 2015, the European Parliament and the European Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, 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) 452 final.

On 21 October the Council also decided to consult the European Economic and Social Committee on the matter.

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 November 2015.

At its 512th plenary session, held on 9 and 10 December 2015 (meeting of 10 December), the European Economic and Social Committee adopted the following opinion by 179 votes to 4 with 6 abstentions.

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Conclusions

1. The Commission considers it appropriate – under Directive 2103/32/EU – to establish a common list of safe countries of origin.
 - 1.1. In an annex, the proposal for a regulation also puts forward an initial list of third countries to be included on the common EU list of safe countries of origin, consisting of Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey.
 - 1.2. The EESC considers that the specific criteria for determining that a country is safe for the purposes of Directive 2011/95/EU and, in particular, Annex I of Directive 2013/32/EU, must be established in a more practical and secure way that provides guarantees.
 - 1.3. Similarly, while welcoming the Commission's initiative, the EESC considers that at this juncture it may be premature to draw up a specific list of countries considered to be safe for these purposes.

2. Recommendations

- 2.1. The EESC welcomes the proposal and believes that it would be appropriate to establish a common EU list of safe countries of origin on the basis of common criteria set out in Directive 2013/32/EU, that will enable Member States to use procedures linked to the application of the concept of safe country of origin and thereby increase the overall efficiency of their asylum systems.
- 2.2. In any case, the establishment of a common EU list seeks to offset some of the current differences between Member States' national lists of "safe" countries of origin.
- 2.3. While Member States may adopt legislation that makes it possible at the national level to designate countries of origin other than those appearing on the EU common list, the common list will ensure that the concept is applied uniformly by Member States in relation to applicants whose countries of origin are on this list.
- 2.4. In any case, in Article 2 of the Regulation must explicitly set out the specific, practical and precise indicators and criteria to be used to assess whether a country should be included on the list of safe countries of origin, inter alia, up-to-date information from sources such as the European Court of Human Rights, the United Nations High Commissioner for Refugees (UNHCR), the European Asylum Support Office (EASO), the Council of Europe (CoE) and other human rights organisations.
- 2.5. The decision to include a country on the common list should be substantiated and justified by carrying out an assessment using all criteria set out in the previous point, regarding the grounds for persecution and serious danger that would merit granting international protection.
- 2.6. With regard to amending the list, a more flexible mechanism for amendments must be provided that is able to respond to changing circumstances in countries included on the list within a reasonable time frame.
- 2.7. The EESC considers that it is necessary to substantiate and justify any amendment to the list, by taking into account expert opinions from UNHCR, EASO, CoE and other human rights organisations in order to amend the list.
- 2.8. The EESC also believes it necessary to establish a mechanism whereby recognised organisations defending human rights, together with ombudsmen and economic and social committees, may initiate the procedure to amend the list.
- 2.9. The EESC proposes requiring a substantiated decision on the relevance of applying the concept of safe country of origin to a specific case, after an individual assessment, as set out in Directive 2013/32/EU.

- 2.10. At the same time, procedural safeguards for accelerated procedures should be reinforced, ensuring that an individual examination of the specific case and the relevance of applying the concept of safe country of origin is carried out for every case.
- 2.11. The EESC believes that the concept of safe country of origin should under no circumstances be applied in cases of infringement of press freedoms, undermining of political pluralism, or in countries where persecution takes place on the grounds of gender and/or sexual orientation, or of belonging to a national, ethnic, cultural or religious minority.
- 2.12. The EESC also considers that the mechanism to identify applicants in vulnerable situations should be improved. In cases where the said situation is identified after the accelerated procedure has already been initiated, the ordinary procedure must be applied immediately.
- 2.13. Finally, access to effective remedy should be guaranteed – with a suspensory effect in accordance with Article 46(5) of Directive 2013/32/EU – against negative decisions on the grounds that a country of origin is deemed to be safe.

3. Background

- 3.1. Efforts by the European Union to try to eliminate differences in Member States' asylum systems – which have been ineffective up to now – are not new. Since 1999 the European Union has adopted a series of legal instruments in order to establish a Common European Asylum System (CEAS), with the aim of harmonising legislation on asylum procedures, reception conditions and other aspects connected to the international protection system.
- 3.2. As the European Council stated in its conclusions of 15 October 2015 (EUCO 26/15) "tackling the migration and refugee crisis is a common obligation which requires a comprehensive strategy and a determined effort over time in a spirit of solidarity and responsibility", eventually concluding that "The orientations set out above represent a further important step towards our comprehensive strategy, consistent with the right to seek asylum, fundamental rights and international obligations. There are however other important priority actions that require further discussions in the relevant fora, including the Commission proposals. And there is a need for continuing reflection on the overall migration and asylum policy of the EU".
- 3.3. Directive 2013/32/EU allows Member States to use derogations and fast-track procedures, particularly accelerated procedures at borders and in transit areas, where the applicant is a national of a country that has been designated as safe by national law and that may be considered as safe for the applicant in accordance with his or her particular circumstances. Only some Member States have adopted national lists of safe countries of origin.
- 3.4. The recast Directive on common procedures for granting or withdrawing international protection (2013/32/EU of 26 June 2013): this Directive tends to reduce disparities between national procedures and to ensure quicker and fairer asylum decisions on repeat applications or those which do not introduce any new elements. Despite improvements made to the new text, it continues to leave Member States substantial leeway that may impede the objective of establishing a truly common procedure.

4. Analysis

- 4.1. The concept of "safe country of origin" has important practical implications, such as the possibility of using an accelerated procedure for these applications (Article 31(8)(b) of Directive 2013/32/EU), the consequent shortening of deadlines for reaching a decision on the merits of an application, the difficulties in identifying applicants in vulnerable situations within shorter deadlines (Article 24 of Directive 2013/32/EU), and, ultimately, greater difficulties in accessing international protection for nationals of these countries, when operating on the presumption that the application is unfounded (Article 32(2) of Directive 2013/32/EU).
- 4.2. This different treatment of applications for international protection according to nationality may clash with the prohibition of the discriminatory treatment of refugees on the grounds of their country of origin laid down in Article 3 of the 1951 Geneva Convention Relating to the Status of Refugees. All of these factors make it advisable to restrict the use of the concept of "safe country of origin".
- 4.3. It should be emphasised that the adoption of a common list of safe countries of origin will not necessarily lead to greater harmonisation, as this common list will co-exist alongside national lists compiled by each Member State.
- 4.4. The Proposal for a Regulation includes a list of seven countries, determined by indicators used by the Commission in its proposal, namely: the existence of a legislative framework for the protection of human rights, ratification of international treaties on human rights, the number of times the European Court of Human Rights (ECtHR) found violations to have occurred in the country, EU accession candidate country status, the percentage of nationals of these countries receiving international protection and inclusion of the countries concerned on national lists of safe countries of origin.
- 4.5. However, it appears that these indicators do not properly assess the criteria set out in Annex I of the Procedures Directive, for example, by not analysing the practical application of the law and respect for human rights, or the absence of persecution or serious harm on the grounds determining eligibility for international protection:
 - 4.5.1. National and international legislative framework in the area of human rights: there is no doubt that the assessment of the respect for human rights in practice required by Annex I of Directive 2013/32/EU is a minimum requirement applicable to any country to be included on the list of safe countries of origin, but it is not sufficient. In any case, the Commission itself does not seem to adequately assess this minimum requirement, in that it includes among the safe countries in its proposal a number of countries that have not ratified key international human rights treaties, such as Kosovo.

4.5.2. The number of times the ECtHR found violations to have occurred in 2014 in the countries in question does not reflect the current human rights situation in the proposed countries. The majority of cases decided in 2014 relate to events which took place many years previously, owing both to delays at the ECtHR itself and to the need to exhaust all domestic legal recourse before making an application to the ECtHR.

The Commission's analysis of the data may lead to confusion. The Commission compares the condemnations with the total number of ECtHR rulings on the country in question, without distinguishing how many of these decisions were decided on the merits of the case, i.e. the degree of respect for human rights. For example, in the case of Turkey, of the 2 899 cases submitted to the ECtHR that the Commission takes into account, although neither the time scale of the cases nor the time taken to decide them are indicated, the court only delivered a decision on the merits in 110 cases, finding a violation of the European Convention on Human Rights in 94 cases, i.e. 93 %¹. In the case of Bosnia and Herzegovina, there were 7 decisions delivered on the merits of the case in 2014, with a violation of human rights found in 5 cases (71 %) ². In the case of Montenegro the figure is 100%³, Serbia 88%⁴, 66%⁵ for the Former Yugoslav Republic of Macedonia and Albania 66%⁶.

Similarly, it makes no reference to which human rights were violated, nor to the content of these decisions - key information when assessing the existence of persecution on the grounds determining eligibility for international protection.

4.5.3. The status of candidate country for accession to the European Union does not imply that the country in question already fulfils the Copenhagen criteria, but rather that a process has begun to validate compliance. On the contrary, the progress reports⁷ on the EU candidate countries included in the list in the proposal for a regulation highlight weaknesses in areas such as respect for human rights, the rule of law, corruption, political control of the media and judicial independence.

¹ European Court of Human Rights: Country Profile-Turkey, July 2015
http://www.echr.coe.int/Documents/CP_Turkey_ENG.pdf.

² European Court of Human Rights: Country Profile- Bosnia-Herzegovina, July 2015.
http://www.echr.coe.int/Documents/CP_Bosnia_and_Herzegovina_ENG.pdf.

³ European Court of Human Rights: Country Profile- Montenegro, July 2015.
http://www.echr.coe.int/Documents/CP_Montenegro_ENG.pdf. 1 case decided on the merits, in which a violation of human rights was found.

⁴ European Court of Human Rights: Country Profile-Serbia, July 2015
http://www.echr.coe.int/Documents/CP_Serbia_ENG.pdf. Of the 18 cases decided on the merits, a violation of the Convention was found in 16 cases.

⁵ European Court of Human Rights: Country Profile-Former Yugoslav Republic of Macedonia, July 2015
http://www.echr.coe.int/Documents/CP_The_former_Yugoslav_Republic_of_Macedonia_ENG.pdf.

⁶ European Court of Human Rights: Country Profile- Albania, July 2015.
http://www.echr.coe.int/Documents/CP_Albania_ENG.pdf. Of the 150 cases dealt with in 2014, a decision on the merits was only delivered in 6 cases, with a violation of the European Convention on Human Rights found in 4 cases.

⁷ Available at http://ec.europa.eu/enlargement/countries/package/index_en.htm.

- 4.5.4. The rates for granting international protection in the EU in 2014 to applicants originating from those countries: The statistical analysis of the data for the whole EU in 2014 carried out by the Commission may create ambiguity. A disaggregated analysis of rates for granting protection in the Member States shows the situation to be more heterogeneous. Thus, for example, the rates for granting protection to people from Kosovo in the second quarter of 2015 reached 18.9% across the EU, but with wide disparities between countries such as Italy (60%) or Germany (0.4%)¹.
- 4.5.5. Inclusion of countries on national lists of safe countries of origin: equally, national lists of safe countries of origin are not homogenous, with each Member State applying different criteria, which means that they cannot be transferred for the purpose of drawing up a common list.
- 4.6. The Commission's proposal to include these seven countries in the list of safe countries of origin should draw on other indicators that are useful and effective for measuring the degree of application of the law and compliance with human rights, such as the sources of information considered relevant by the ECtHR² in its established case-law for assessing the situation in the country of origin and the risk in the event of return. The proposal for a regulation itself does indeed include these sources, in particular "the EEAS, EASO, UNHCR³, the Council of Europe and other relevant international organisations", in Article 2(2) for reviewing the list, however not for drawing it up.
- 4.7. Similarly, we consider that the indicators should be used that are capable of reflecting the human rights situation with respect to **all** grounds determining eligibility for international protection, such as respect for freedom of expression and of the press, respect for political pluralism, the situation of the lesbian, gay, bisexual, transsexual and intersexual (LGBTI) community or ethnic, cultural or religious minorities.
- 4.8. Article 2(2) of the proposal for a regulation provides for the periodic review of the common list of safe countries of origin. The amendment procedure referred to in the proposal for a regulation is the ordinary legislative procedure (Article 2(3) of the proposal for a regulation) and a procedure for issuing a one-year suspension, extendible by an additional year, in the event of sudden changes in the situation of the country (Article 3 of the proposal for a regulation).

¹ Eurostat: *First Instance decision on applications by citizenship, age and sex*, quarterly data. <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>.

² *Inter alia*, NA vs UK app. 25904/2007, 17 July 2008; Gaforov vs Russia, 21 October 2010.

³ United Nations High Commissioner for Refugees.

- 4.9. Neither of these procedures, either the ordinary legislative (co-decision) procedure or the suspension procedure in Article 3, appears to offer a quick, streamlined and flexible mechanism for dealing with changes in the situation of the countries of origin included in the common list. Unfortunately, there are several examples of a rapid deterioration of the political situation, democratic safeguards and respect for human rights in a number of countries, which the established mechanisms would struggle to cope with. Furthermore, these situations can persist for a longer period of time, which would make that the maximum suspension period of two years appear to be very limited.
- 4.10. When assessing sudden changes in the situation of a country concerned, the expert opinion of the "UNHCR, the EASO, the Council of Europe and other relevant international organisations" should always be included, as is the case for amendments made in accordance with the ordinary legislative procedure.
- 4.11. Conversely, the adoption of a Regulation excludes the possibility for asylum applicants to challenge the inclusion of a safe country on the list before national authorities, a possibility open to them in the context of national lists. It would be advisable to voice the possibility that this amendment is being encouraged by human rights organisations or asylum seekers.
- 4.12. Article 31(8)(b) of Directive 2013/32/EU authorises Member States to process applications from nationals from safe countries of origin using an accelerated examination procedure. This accelerated procedure may not under any circumstances cause the procedural guarantees¹ to be undermined due to the speed of deadlines. Similarly, it must not lead to these applications for international protection being assessed on a non-individual basis, as prohibited by Article 10(3)(a) of Directive 2013/32/EU².
- 4.13. In fact, Article 36(1) of Directive 2013/32/EU stipulates that countries included in the lists of safe country of origin may only be considered as a safe third country for a particular applicant following an individual examination. This individual examination would have to assess, in a substantiated decision where the burden of proof falls on the Member State and subject to appeal, if it is appropriate to apply the safe country of origin concept to the specific case.
- 4.14. Since the adoption of a Regulation involves restricting the possibilities for asylum seekers to oppose the inclusion of a country of origin on the list of safe countries of origin, it is necessary to strengthen guaranteed access to an effective remedy in each individual case, granting suspensive effect, as provided for in Article 46(5) of the Asylum Procedures Directive.

¹ CJEU C-175/11 of 31 January 2013. Paragraphs 74-75.

² <http://eur-lex.europa.eu/legal-content/En/TXT/PDF/?uri=CELEX:32013L0032&from=En>.

4.15. Equally, it is necessary to identify applicants in particularly vulnerable situations to whom, in accordance with Article 24(3) of Directive 2013/32/EU, the accelerated procedure cannot be applied. In these cases, there should be a requirement to carry out this identification process before deciding to apply the accelerated procedure or, if a situation of vulnerability is identified subsequently, it should be possible to abandon the accelerated procedure and return to the standard procedure.

Brussels, 10 December 2015.

The President
of the
European Economic and Social Committee

Georges Dassis
