Council of the European Union

Brussels, 4 July 2025
(OR. en)

11147/25

Interinstitutional File: 2025/0101 (COD)

LIMITE

JAI 993
ASILE 62
FRONT 169
CODEC 966

NOTE

From:	Presidency
To:	Delegations
Subject:	Proposal for a regulation as regards the establishment of a list of safe countries of origin at Union level – Discussion paper: outstanding issues and way forward

After several fruitful and engaging discussions under the Polish Presidency, the legislative proposal establishing a list of safe countries of origin at Union level and frontloading elements of the Pact has been improved substantially. The discussions confirmed **the will of Member States to finally deliver on an EU list of safe countries of origin and to reach a Council position**, so that negotiations with the European Parliament can be finalized before the entry into application of the Pact in June 2026.

The Danish Presidency intends to keep up the pace and continue the work on the proposal as a matter of priority. Based on the outcome of the above-mentioned discussions and the written comments received from Member States to date, the Presidency is of the opinion that several substantial issues should be clarified.

Therefore, while acknowledging the efforts undertaken by the Polish Presidency to present a compromise proposal, before engaging in any further drafting exercises, the Danish Presidency believes that it would be beneficial to hold **an additional in-depth discussion on some of the outstanding issues**.

While certainly not exhaustive, the Presidency has identified **the following key outstanding issues** which it would like to obtain the views of delegations on during the next Asylum Working Party, with a view to a future redraft of the proposal:

I. LINK BETWEEN ARTICLE 62(1) AND THE EU LIST OF SAFE COUNTRIES OF ORIGIN

The Asylum Procedure Regulation provides in Article 62(1) that third countries shall be designated as safe countries of origin at Union level in accordance with the conditions laid down in Article 61. The general rule in Article 61 establishes the criteria which must be applied in establishing an EU list of safe countries of origin. However, the Commission's proposal called for Article 62(1) to be deleted, thereby, as indicated orally by the Commission, loosening the ties between the applicable conditions in Article 61 and the designation of countries at Union level.

This proposed amendment was most recently addressed at the Asylum Working Party meeting on 10 June 2025, where the Commission clarified that it was deemed legally necessary to disconnect the EU list from the common criteria set out in Article 61. The Commission explained that the Asylum Procedure Regulation alters the definition of safe country of origin, in that Article 61(1) require there to be "*no* persecution … and *no* real risk of serious harm" in the prospective safe countries of origin, which make the criteria for the assessment of whether a third country qualifies as a safe country of origin under the Asylum Procedure Regulation stricter as compared to the definition found in the Asylum Procedures Directive.[1] In view of the more stringent criteria and the fact that it was decided to designate the proposed safe countries of origin without any exceptions for certain categories of persons, the Commission assessed that, with the exception of the EU candidate countries and Kosovo*, the proposed countries did not meet the legal criteria necessary to be

[1] See Annex I of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

considered safe countries of origin within the meaning of Article 61(1) of the Asylum Procedure Regulation and therefore could not designated on the basis of those criteria.

Following the discussion at the Asylum Working Party meeting on 10 June 2025, it has become clear that this issue requires further consideration. In particular, the Presidency and delegations would benefit from a more in-depth understanding of the intended consequences of the Commission's proposed amendment. In the view of the Presidency, the proposed change raises some questions. The Commission proposal would seemingly requalify the relationship between the substantive provision on the conditions governing the designation of safe countries of origin at EU level and the procedural step of actually designating those countries. It would also, in effect, create a separate concept of safe country of origin for the purpose of designation at Union level.

The Presidency would like to point out that, if interpreted too narrowly, **the operational utility of the safe country of origin concept as an efficient tool** to swiftly examine specific types of asylum applications could be thwarted. Such a restrictive approach would in fact exclude from the scope of the concept third countries that are generally safe for their inhabitants, and which therefore have low EU-wide recognition rates. As is made clear by the recitals to the Asylum Procedure Regulation, the safety requirements for safe countries of origin **should not be understood to literally proscribe every instance of persecution or other forms of ill-treatment in all circumstances**; indeed, recital 80 clarifies that a third country's designation as safe is not subject to "an absolute guarantee of safety for nationals of that country, even for those who do not belong to a category of persons for which such an exception is made." It may also overlook the broader purpose of the concept, which is to ensure an **efficient examination of applications from third-country nationals that are likely to be unfounded**.

In contrast, retaining the link between the general definition and the common EU list would have the benefit of **preserving common rules on the criteria and conditions** for designating safe countries of origin at both national and Union level, thereby avoiding divergences in the assessment of the safety of potential safe countries of origin, as well as **making the conditions for EU-wide designation clear for any future designation exercises**.

In light of the limited guidance from the Court of Justice of the EU interpreting this specific aspect of the safe country of origin concept,[2] the Danish Presidency proposes to maintain the approach of its predecessor by reinserting the current Article 62(1) back into the proposal.

Can Member States agree with the considerations of the Presidency and support the retention of the current paragraph 1 of Article 62 of the Asylum Procedure Regulation?

II. THE PROPOSED SAFE COUNTRIES OF ORIGIN

a) The possible inclusion of additional third countries on the EU list

During the discussions held so far, the merits of designating the third countries set forth in the Commission proposal as safe countries of origin were discussed, having regard *inter alia* to background documents produced by the EUAA. During the meetings held in May and June, as well as in the written comments received, some delegations provided suggestions for ***additional*** **third countries** that could be considered included on the common EU list.

It is important to note that the common EU list should **not be regarded as an exhaustive, definite list** of third countries that satisfy the criteria to be considered safe countries of origin. This consideration was also reflected in the Polish Presidency's compromise proposal, which suggests, in a footnote, to add a recital clarifying that the EU list does not imply that other third countries cannot be classified as safe countries of origin, and that the scope of the list may change over time.

Instead, the Presidency considers that the inclusion of a third country on the EU list should bring **real operational and practical value** to the Member States, by focusing on those countries that produce high numbers of irregular arrivals to EU as a whole. In this context, the Presidency believes that the Commission's proposed list of safe countries of origin (Bangladesh, Colombia, Egypt, India, Kosovo*, Morocco, and Tunisia) represents a major step forward, since it is to a large extent made up of countries whose nationals constitute a significant share of the overall number of asylum

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[2] With respect to the definition contained in the Asylum Procedures Directive, the Advocate General of the Court of Justice of the EU recently opined that a third country could be considered to qualify as a safe country of origin where not everyone, but the majority of the population is protected against persecution or serious harm. See Advocate General Richard de la Tour's Opinion in Joined Cases C-758/24 | [Alace] and C-759/24 | [Canpelli], paragraph 79.

applications lodged in the EU. Moreover, where a Member State faces a particular challenge with regard to high numbers of unfounded applications from nationals of a third country not designated at EU level, it retains the option of making use of national lists as a supplementary tool.

In the light of the above, understanding that the EU list is without prejudice to the ability of Member States to designate additional third countries not designated at EU level, the Presidency feels that additional discussions on countries that could be further included within the scope of the proposal risk complicating the negotiations in the Council too much and, consequently, suggests to not reopen the debate on this point.

Do Member States agree that the proposed safe countries already represent a significant improvement and that further discussions on additional candidates are not necessary at this stage?

b) Designation of EU candidate countries

In its proposal, the Commission took a **two-pronged approach to the designation of safe countries of origin at EU level**. First, with respect to the countries that have been designated as a candidate country by the European Council, the Commission concluded that their status as candidates for EU membership evidenced the observance of particularly high human rights and refugee protection standards, which warranted designating them together as a category of safe countries of origin rather than on an individual basis. Secondly, other safe third countries were designated individually and listed separately in a new annex.

There appears to be a variety of opinions among the Member States concerning the treatment of EU candidate countries in the proposal. While some Member States are in favour of the Commission's approach, some delegations are of the opinion that the EU candidate countries should be explicitly listed on the common EU list with the other third countries.

The Presidency would like to highlight that, perhaps somewhat paradoxically in light of the reasons which lead the Commission to choosing this approach, the EU candidate countries would seemingly be subject to an added layer of safeguards under the Commission's proposal as compared to the other designated third countries. For example, sanctions imposed on an EU candidate country would, *ipso facto,* result in that country being rendered ineligible as a safe country of origin at EU level, whereas the same factual situation with respect to another designated third country would require the country to be suspended by a delegated act and ultimately removed from the EU list via the ordinary legislative procedure. It perhaps also bears recalling that in previous Commission proposals establishing an EU list of safe countries of origin, EU candidate countries were listed individually.[3]

While the approach taken in the original Commission proposal and the revised compromise proposal certainly has merit, it might not be as straightforward as simply listing all the designated countries together on the proposed Annex II. There may therefore be strong arguments in favour of the latter approach. Whatever the path chosen, it will have consequences for how the other elements of the proposal are developed further. In light of this, the Danish Presidency would like to receive clear guidance from the Member States on this point.

Do Member States support the current structure of the text, with the EU candidate countries designated separately as a category? Or do you rather believe that a more simplified approach should be pursued by designating <u>all</u> of the third countries individually in the Annex?

In case Member States prefer the Commission's approach, can you support the inclusion of all or some of the exceptions proposed by the Commission in Article 62(1), points (a)-(c)?

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[3] See Annex to the Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (COM(2016) 467 final); Annex to 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).

What modifications, if any, would Member States like to see to those exceptions? For example, would Member States support a reference to EUAA data in point (b), in addition to annual Union-wide average Eurostat data, in order to take into account the fluctuation of recognition rates throughout a calendar year?

III. THE NOTIFICATION PROCEDURE

Under the framework proposed by the Commission, the EU candidate countries would cease to be regarded as safe countries of origin at Union level where the circumstances listed in the new Article 62(1), points (a), (b) and (c), apply. However, the Commission's original proposal did not provide for a mechanism to determine when those exceptions would be triggered. During prior meetings at the Asylum Working Party, several Member States suggested including a form of notification procedure in order to ensure that the proposed exceptions were uniformly applied across Member States.

Filling this gap, the Polish Presidency proposed a notice procedure, tasking the Commission with assessing whether the circumstances referred to in points (a)-(c) applied and to publish a notice to this effect in the Official Journal of the European Union. In order to preserve the role of the Council in this procedure, the Polish Presidency further proposed that the Commission's assessment be conditional on the Council's approval.

The Presidency believes that the inclusion of a type of notification procedure may present added value to the proposal, at least in terms of legal clarity as to when the Union designation of EU candidate countries as safe countries of origin should cease to apply. The Polish Presidency provided a viable solution to the issue at hand. However, at this juncture of the negotiations, not all delegations seem entirely convinced of the procedure laid out in the Polish compromise proposal.

In order to fully explore all possible avenues, the Danish Presidency would like to table an alternative option with a view to further discussion and consideration: **the use of implementing acts to trigger the applicability of the proposed exceptions** where a situation objectively shows that one or more of the applicable circumstances exist. Such a solution would rely on an efficient and well-established procedure, while at the same time aligning the proposal with the rest of the Asylum Procedure Regulation, which already make use of implementing acts where it is necessary for the legislation to be applied by the Member States in a uniform manner.

With regard to the proposed points (b)-(c), given that the occurrence of those circumstances relates primarily to questions of fact which can be determined on the basis of factual and objective criteria, the determination of whether the conditions set out in those provisions are met **could arguably be left entirely to the Commission**, without there being any need for the involvement of the Council. Alternatively, as proposed by the Commission at the last Asylum Working Party meeting and in some of the written contributions of the Member States, the application of these circumstances would not necessarily need to be triggered by any procedure at all – provided that the co-legislators can agree on a sufficiently precise legal framework.

With respect to point (a), a finding that there is a serious and individual threat to civilians' life or person in a third country due to indiscriminate violence in a situation of armed conflict could have potential implications for the Member States' external relations with the third country concerned. In these cases, the Presidency therefore believes that **the existence of those circumstances should be established by a Council implementing decision**, acting on the basis of a Commission proposal. Such an approach would therefore necessitate that implementing powers be conferred on the Council.

Even though the European Parliament's opposition to the use of implementing acts is well known, they nonetheless remain the tool provided for in the Treaties where uniform conditions are needed for the application of EU law, and their use in this case would therefore, at the very least, appear to be legally viable. Moreover, it should be noted that the procedure proposed by the Polish Presidency did not envisage a role for the Parliament either – and its support for such a procedure not assured. The feasibility of this way forward could therefore be explored further.

In any case, the Presidency considers there to be a consensus among the Member States that, whatever the solution chosen, a notification procedure should not involve the application of convoluted and cumbersome mechanisms.

Lastly, as regards the interplay between the application of the circumstances listed in the proposed Article 62(1), points (a)-(c), and the procedure for suspension and removal set out in Article 63 of the Asylum Procedure Regulation, the Commission has clarified that the former constitute autonomous grounds for disapplying the designation of EU candidate countries as safe countries of origin, meaning that **the procedure foreseen in Article 63 would also be applicable to those countries** where there is a significant change for the worse in the situation in the countries.

Including additional text in the proposal clarifying the relation between those two procedure and situations might be considered.

Do Member States support a notification procedure and if so, what would be the delegations' preferred option?

– The procedure proposed by the Polish Presidency (potentially further modified)

– The use of implementing acts, either for all of the exceptions or solely for point (a), as proposed in the present discussion paper

– No procedure at all, with the understanding that the existing procedure in Article 63 should be the sole avenue for suspending the designation of third countries, which could be activated where the proposed exceptions apply

Alternatively, do Member States have suggestions for a different mechanism?

IV. OTHER ISSUES

During the negotiations so far, numerous delegations have expressed concerns about the impact of the designation of safe countries of origin at Union level on their national lists of safe countries of origin. In particular, during the Asylum Working Party meeting on 16 May 2025, distinct views were expressed on the question of whether EU law requires Member States to take the necessary steps to revoke their national designations of countries also designated at EU level within a maximum period of time. The Commission's proposal does not provide for a solution in this regard.

In order to provide more clarity and legal certainty, the Presidency proposes to add a dedicated clause by way of a new paragraph 1a in Article 64, clarifying the time frame for Member States to bring their national lists into compliance with the EU list.

Such a provision could for example look as follows:

"Article 64

Designation of third countries as safe third country or safe country of origin at national level

1. Member States may retain or introduce legislation that allows for the national designation of safe third countries or safe countries of origin other than those designated at Union level for the purpose of examining applications for international protection.

1a. For the purposes of paragraph 1, where a Member State has designated a third country as a safe third country or a safe country of origin at national level which is subsequently designated as a safe third country or a safe country of origin at Union level, that Member State shall ensure that the national designation concerned is repealed or amended, as the case may be, within a period of [xx months/year(s)] from the date on which the designation at Union level took effect.

In cases where the scope of the national designation conflicts with the designation made at Union level, the latter shall prevail."

Do Member States agree that additional provisions should be included in the proposal in order to address the concerns of the Member States in this regard? If so, do you think that the above proposal provides an appropriate starting point for further discussion?