

12888/03

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

LIMITE

ASILE 53

NOTE

from : Presidency

to : Permanent Representatives Committee / Council

No. prev.doc. : 12815/03 ASILE 52

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

Subject : Amended proposal for a Council Directive on minimum standards on procedures
in Member States for granting and withdrawing refugee status

1. On 5 June 2003, the JHA Council took note of a statement from several delegations calling upon the Commission to incorporate, into the above-mentioned proposal, the drawing up and review of a minimum common list of **safe countries of origin**.
2. Within the context of the proceedings of the Working Party, the Presidency has drawn up a "package" of three Articles referring respectively to the notions of safe country of origin, the setting up of a procedural mechanism for the drawing up of a minimum common list of safe countries of origin and to the possibility of allowing national designations of such countries.

Following the examination of this item at the Strategic Committee on Immigration, Frontiers and Asylum and at the Permanent Representatives Committee, three delegations maintained scrutiny reservations concerning the principle of setting up a binding list of safe countries of origin. They wanted to be sure that there will always be an individual examination of each application for asylum.

In this context, it is recalled that the present draft of Article 30(2) allows the applicant to submit grounds for considering a country included in the list not to be safe in his particular circumstances. This would lead to an individual examination of his application.

3. In particular, the draft compromise submitted by the Presidency establishes the following :

(a) Article 30

- a third country can be designated as a safe country of origin only in accordance with the criteria set out in Annex III. Member States shall consider as unfounded applications for asylum submitted by applicants who come from a third country included in the minimum common list provided for in Article 30A, under the condition that there are no reasons for considering that this third country is not a safe country of origin in his/her particular circumstances;

(b) Article 30A

- the Council, on a proposal from the Commission and after consultation of the European Parliament, may adopt a minimum common list of safe countries of origin and may revise it later;

(c) Article 30B

- Member States may determine, on the basis of the criteria set out in Annex III, a national list of safe countries other than those appearing on the minimum common list as safe countries of origin. Rules setting up the range of source of information to be used by Member States when setting up such a list are also included.

4. In these circumstances, it is the intention of the Presidency to submit to the Council the text contained in the Annex to this note as well as the following questions :

- *do delegations accept a mechanism setting up a minimum common list of safe third countries of origin, binding for all Member States? or*
- *do delegations prefer, instead, a non-binding mechanism based solely on national designations?*

Concerning the voting rules for the setting up of a minimum common list of safe third countries of origin and taking into account that the insertion in the body of this Directive of a first minimum common list would not be feasible within the time limits fixed by the European Council :

- *do delegations agree on a mechanism which will allow the Council, after the adoption of this Directive, to establish a minimum common list of safe third countries of origin by qualified majority on the basis of a Commission proposal and after consultation of the European Parliament? or*
- *do delegations prefer, instead, a mechanism which will require the Council to seek for the assent of the European Parliament when establishing such a minimum common list?*

o

o o

5. The draft Directive also provides for the possibility for Member States to introduce or maintain in their national legislations the principle of **safe third countries**. Such countries would not be those of the applicant's nationality but third countries where the applicants would have stayed or travelled through before arriving in the Member State and where they could have asked for protection.

The application of such principle has been the subject of extensive debate at technical level. Many delegations expressed strong doubts concerning the effectiveness of such principle, since it would be impossible to apply if the safe country concerned was unwilling to readmit applicants who are not their nationals.

The draft Directive allows each Member State to decide whether or not to apply this principle and establishes the criteria for the inclusion of a third country in a national list. However, no mechanism for the setting up of any common list, even if it is a minimum list, is provided for.

It is the intention of the Presidency to submit to the Council the following questions :

- *do delegations consider that a mechanism similar to the one established for safe countries of origin could be provided for with a view to setting up a minimum common list of safe third countries ? or*

- *do delegations consider that the application of such a principle should be to let each Member State, which would have the possibility, while respecting certain conditions established in an Annex to the Directive, to establish their own national list of safe third countries ?*

Article 30

Safe countries of origin

1. A third country can be designated as a safe country of origin for the purpose of examining applications for asylum only in accordance with the criteria set out in Annex III.
2. A third country that is designated as a safe country of origin in accordance with the criteria set out in Annex III can be considered as a safe country of origin for a particular applicant for asylum only if
 - (a) he/she has the nationality of that country or,
 - (b) it is his/her country of former habitual residence, if he/she is a stateless person;
 - (c) (deleted)¹

and the applicant has not submitted any grounds for considering the country not to be a safe country of origin in his/her particular circumstances in terms of his/her qualification as a refugee in accordance with Council Directive .../ ...*[Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection]*.

3. Without prejudice to paragraph 2 and to Article 30B,² Member States, shall consider the application for asylum as unfounded where the third country is designated by the Council as safe pursuant to Article 30A.

¹ **B/FIN/NL/UK** : scrutiny reservations on the deletion of this paragraph. B/UK wanted to cover cases of persons born in a safe third country without having its nationality. (This subparagraph read: "he/she was formerly habitually resident in that country").

² **FIN/S/UK** : scrutiny reservations.

Article 30A¹

Minimum common list of third countries as safe countries of origin

1. The Council may, acting by a qualified majority² on a proposal from the Commission and after consultation [obtaining the assent] of the European Parliament, adopt a minimum common list of third countries that shall be regarded by Member States as safe countries of origin in accordance with the criteria set out in Annex III. When making its proposal, the Commission shall make use of information from the Member States, its own information and, where necessary, information from UNHCR, the Council of Europe and other relevant international organisations.
2. The Council may, acting by a qualified majority on a proposal from the Commission and after consultation [obtaining the assent] of the European Parliament, amend the minimum common list by adding or removing third countries, in accordance with the criteria set out in Annex III. The Commission shall examine any request made by the Council or by a Member State that it submit a proposal to amend the minimum common list.
3. Where the Council requests the Commission to submit a proposal for removing a third country from the minimum common list, the obligation of Member States pursuant to Article 30(3) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.

¹ **FIN/P** : scrutiny reservations. The text should clearly set out that it will always be an individual examination.

S : reservation. It was opposed to the setting up any list of safe countries. There should always be an individual examination.

² **F/P/UK** : scrutiny reservations. The Council should act by unanimity.

4. Where a Member State requests the Commission to submit a proposal to the Council for removing a third country from the minimum common list, that Member State shall notify the Council in writing of the request made to the Commission. The obligation of this Member State pursuant to Article 30(3) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.
5. The European Parliament shall be informed of the suspensions under paragraphs 3 and 4.
6. The suspensions under paragraphs 3 and 4 shall end after [three] months, unless the Commission makes a proposal, before the end of this period, to withdraw the third country from the minimum common list. The suspensions shall end in any case where the Council rejects, a proposal by the Commission to withdraw the third country from the list.
7. Upon request by the Council, the Commission shall report to the Council and the European Parliament on whether the situation of a country on the minimum common list is still in conformity with the criteria set out in Annex III. When presenting its report to the Council and the European Parliament, the Commission may make such recommendations or proposals as it deems appropriate.¹

¹ NL : establish a regular reporting duty.

Article 30B

National designation of third countries as safe countries of origin

1. Without prejudice to Article 30A, Member States may retain or introduce legislation that allows for the national designation of third countries other than those appearing on the minimum common list as safe countries of origin for the purpose of examining applications for asylum.
2. Member States shall assess whether a third country can be designated by them as a safe country of origin in accordance with the criteria set out in Annex III on the basis of a range of sources of information, including in particular information from other Member States, the UNHCR, the Council of Europe and other relevant international organisations.
3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating third countries as safe countries of origin and which wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and shall notify as soon as possible any subsequent relevant amendments.
4. Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating third countries as safe countries of origin after the entry into force of this Directive, as well as any subsequent relevant amendments.¹

¹ **UK** : add the following paragraph :

"4. Member States may also designate part of a country as safe or designate a country as safe for a specified group of persons in that country where the conditions of Annex III are applicable to that part or group."

B/D/F/FIN/S : reservations on this UK suggestion. F/FIN/S considered that such a provision could lead to discrimination on the basis of sex, race, religion, etc.

IRL : add a new paragraph in order to enable Member States to share information used to designate countries as safe countries of origin along the following lines :

"5. Member States may, upon request from another Member State, exchange information used to designate a country as safe country of origin".

CRITERIA WITH RESPECT TO THE DESIGNATION OF SAFE COUNTRIES OF ORIGIN

A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law and the general political circumstances, it can be clearly shown that there is generally neither persecution¹ as defined in Article 11 of Council Directive .../... [*Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection*] nor serious harm as defined in Article 15 of the said Council Directive.

To that end, the assessment of the legal situation, the application of the law and the general political circumstances shall [inter alia] take into account whether

- (a) the country is governed by the rule of law;
- (b) it has democratic structures;
- (c) it observes the rights and freedoms laid down in the European Convention for the Protection of Human Rights and Fundamental Freedoms and/or the International Covenant for Civil and Political Rights and/or the Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention; and
- (d) it provides for a system of effective remedies² against violations of these rights and freedoms.

¹ **D** : read "it appears guaranteed that there is neither persecution...".

² **FIN** : refer to the possibility of having a fair trial instead of to "effective remedies".