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NOTE

from : Presidency

to : Strategic Committee on Immigration, Frontiers and Asylum / Permanent
Representatives Committee

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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**.

Within the context of the works of the Asylum Working Party, the Presidency has drawn up, with the help of the Commission services, 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.

At the Working Party, a majority of delegations were in favour of the resulting draft text (A/B/D/E/F/I/L/NL/UK), three delegations were opposed to the principle of setting up a mechanism concerning safe countries of origin (FIN/P/S) and two did not take a definitive position (EL/IRL).

2. In particular, Article 30 :

- allows for an optional incorporation of the concept of safe country of origin within national legislations,
- establishes that the Member State shall reject an application for asylum from an applicant coming from a third country which has been identified as a safe country of origin, following the criteria appearing in Annex III to the draft Directive, and it has been considered that such country is in particular safe for the said applicant and it has been also considered that there are no reasons for considering that the said third country is unsafe for the specific situation of the applicant,
- obliges, without prejudice to the individual examination referred to in the previous indent, the Member State which has decided to apply the concept of safe third country, to reject the application for asylum submitted by an applicant who comes from a country considered as safe country of origin and which is included in the minimum common list provided for in Article 30A.

3. Article 30A

- provides for a mechanism allowing the Council, following a proposal from the Commission and after obtaining the assent of the European Parliament, to adopt a minimum common list of safe countries of origin as well as for its revision,
- establishes that once a minimum common list is adopted by the Council, the eventual national list must include at least those countries included in the minimum common list,
- implies that the national list may also include other countries than those appearing in the minimum common list.

4. Article 30B

- establishes the possibility for those Member States which intend to adopt the principle of safe country of origin to determine, on the basis of the criteria included in Annex III, a national list of safe countries of origin,
- sets up the range of sources of information to be used by Member States when assessing when a third country can be designated as a safe country of origin,
- sets up the obligation for Member States to notify to the Commission their national laws or regulations concerning the designation of safe countries of origin.

5. The Presidency considers that its draft respects the indications contained in the statements presented by several delegations at the JHA Council meeting last June and that it can be a reasonable compromise for those delegations which do not intend to introduce such principle in their national law concerning procedures for considering asylum applications.

The Strategic Committee on Immigration, Frontiers and Asylum is invited to examine the draft proposed by the Presidency as included in the Annex to this Note (Articles 30, 30A and 30B and Annex III to the draft Directive) for the purpose of overcoming the remaining reservations.

6. Moreover, the Permanent Representatives Committee will have the opportunity to consider the following questions which the Presidency intends to submit to the Council :

- *could a text as proposed by the Presidency meet the unanimous approval of delegations ?*
- *do delegations prefer, however, to provide for a more binding mechanism which would oblige all Member States to solely apply the common list previously adopted by the Council ?*

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7. 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 object of a large debate at the Asylum Working Party. Certain delegations considered that such a concept, while having a strong dissuasive effect concerning instrumental applications, lacks any substantial efficiency as its practical application would be impossible in the absence of the goodwill of the safe country concerned to readmit those applicants which are not their nationals. This principle would be only applicable in practice where efficient readmission agreements with such countries exist.

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.

In this context, it is the Presidency's intention to submit the following questions to the Council :

- *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 ?*

- *do delegations consider, however, 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 ?*

Article 30
Safe countries of origin

1. Member States may, within the framework of the examination of an application for asylum, apply the concept of safe country of origin.¹
2. 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.
3. 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)²

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]*.

¹ **Cion** : opposed to the insertion of this paragraph and to the wording of paragraph 4(a). The text must be binding for all Member States.

B/L : scrutiny reservations. They were sensible to Cion arguments.

² **B/FIN/NL/UK** : scrutiny reservations on the deletion of this paragraph. B/UK wanted to cover cases of persons being born in a safe third country without having its nationality. (This sub-paragraph read: "he/she is formally habitually resident in that country").

4. In accordance with paragraph 3 of this Article,¹
- (a) Member States, which have decided to apply the concept of safe country of origin, shall reject the application for asylum as unfounded² where the third country is designated by the Council as safe pursuant to Article 30A;
 - (b) Member States, which have designated the third country as safe as set out in Article 30B, may reject the application for asylum as unfounded.

¹ **FIN/S** : scrutiny reservations.

² **NL** : add "or may reject it".

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 obtaining the assent of the European Parliament,³ adopt a minimum common list⁴ 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. Once the Council decision under paragraph 1 takes effect, national lists pursuant to Article 30B shall contain at least the third countries included in the minimum common list.⁵
3. The Council may, acting by a qualified majority on a proposal from the Commission and after 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.⁶

¹ **FIN/IRL/P/S/UK** : scrutiny reservations.
A/B/F/I/L : a common list of safe countries of origin should be established in order to set up an effective functioning of this principle.
FIN/P/S : opposed to the setting up of an obligatory common list of safe countries of origin. There should always be an individual examination.
NL/UK : could accept a common list if it is a flexible one.

² **F/P** : the Council should act by unanimity, given i.a. that such a provision could raise difficulties linked to the Common Foreign Security Policy (F : amendments to the list under (3) could be done by qualified majority).

³ **D** : simple consultation of the European Parliament should be sufficient.

⁴ **P** : scrutiny reservation. The concept of minimum common list should be clarified.

⁵ **B/D/NL** : scrutiny reservations.

⁶ **F/S/UK** : were concerned about lack of flexibility of the suspension mechanism provided for in paragraphs 4 and 5.

4. 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(4)(a) shall be suspended with regard to this third country as of the day following the Council decision requesting such a submission.
5. 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(4)(a) shall be suspended with regard to the third country as of the day following the notification of the request to the Council.
6. The European Parliament shall be informed of the suspensions under paragraphs 4 and 5.
7. The suspensions under paragraphs 4 and 5 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, by a qualified majority and after having obtained the assent of the European Parliament, a proposal by the Commission to withdraw the third country from the list.
8. 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 as safe countries of origin.
2. Member States shall assess whether a third country can be designated 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 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 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 discriminations 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 that there is neither persecution...".

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