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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Reasons for and objectives of the proposal

- **Establishment of an EU common list of safe countries of origin**

The European Commission presented a comprehensive European Agenda on Migration on 13 May 2015¹, outlining, in addition to the immediate measures proposed shortly thereafter by the Commission to respond to the crisis situation in the Mediterranean, 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 and in light of the current unprecedented pressure on Member States' asylum systems, the Commission stressed the need to have a more effective approach to abuses and indicated its intention to strengthen the safe country of origin provisions of Directive 2013/32/EU on common procedures for granting and withdrawing international protection (hereinafter "Directive 2013/32/EU") in order to support the swift processing of asylum applications from persons originating from countries designated as safe. As underlined by the European Council in its conclusions of 25 and 26 June 2015, this includes the establishment of an EU common list of safe countries of origin.

Directive 2013/32/EU enables Member States to apply specific procedural rules, in particular accelerated and border procedures, where the applicant is a national of a country (or a stateless person in relation to a third country of former habitual residence) that has been designated as safe country of origin by national law and that, in addition, may be considered as safe for the applicant in light of his or her particular circumstances. Only some Member States have adopted national lists of safe countries of origin. In addition these national lists present some divergences that could result from differences in the assessment of the safety of certain third countries or from differences in the nature of the flows of third country nationals that the Member States are facing.

Directive 2013/32/EU sets out common criteria for the designation of safe third countries of origin by the Member States in its Annex I, which provides the following:

"A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU², no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

In making this assessment, account shall be taken, inter alia, of the extent to which protection is provided against persecution or mistreatment by:

(a) the relevant laws and regulations of the country and the manner in which they are applied;

¹ COM (2015) 240 final, 13.5.2015.

² Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (OJ L 337, 20.12.2011, p.9).

(b) observance of 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 United Nations Convention against Torture, in particular the rights from which derogation cannot be made under Article 15(2) of the said European Convention;

(c) respect for the non-refoulement principle in accordance with the Geneva Convention;

(d) provision for a system of effective remedies against violations of those rights and freedoms.”

Currently EU law does not contain an EU common list of safe countries of origin. The present proposal aims at establishing such a EU common list, on the basis of the common criteria set in Directive 2013/32/EU, as it will facilitate the use by all Member States of the procedures linked to the application of the safe country of origin concept and, thereby, to increase the overall efficiency of their asylum systems as concerns applications for international protection which are likely to be unfounded. An EU common list will also reduce the existing divergences between Member States' national lists of safe countries of origin, thereby facilitating convergence in the procedures and deterring secondary movements of applicants for international protection.

- **Third countries to be included in the EU common list of safe countries of origin**

On the basis of all relevant information at its disposal, in particular reporting from the European External Action Service (EEAS) and the information from Member States, the European Asylum Support Office (EASO), the Council of Europe, the United Nations High Commissioner for Refugees (UNHCR) and other relevant international organisations, the European Commission has come to the conclusion that Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Kosovo^{*3}, Montenegro, Serbia and Turkey are safe countries of origin within the meaning of Directive 2013/32/EU and should be included in the EU common list of safe countries of origin.

The European Commission used in particular reports from the EEAS, including dedicated country-specific reports of 31 August and 1 September 2015, information from Member States, including national legislation on the designation of safe countries of origin, information from EASO, including written reports and the outcome of a coordination meeting on safe countries of origin with Member State experts of 2 September 2015, as well as publicly available information from the Council of Europe, the UNHCR and other relevant international organisations.

As regards Albania, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. There are no indications of any incidents of *refoulement* of its own citizens. Isolated cases of blood feud, domestic violence, and discrimination or violence against individuals belonging to ethnic minorities or vulnerable groups of persons, including Roma, Balkan Egyptians, and LGBTI⁴, still occur in individual cases. Albania's membership of the European Convention on Human Rights entails that the possibility of recourse to the European Court of Human Rights is a safeguard guaranteeing effectiveness of the system of remedies against such human rights

³ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

⁴ Lesbian, gay, bisexual, transgender, and intersex persons.

violations. In 2014, the European Court of Human Rights found violations in four out of 150 applications. In 2014, Member States considered that 7,8% (1040) of asylum applications of citizens from Albania were well-founded. At least eight Member States have designated Albania as a safe country of origin. Albania has been designated as a candidate country by the European Council. Particular attention should be paid by Member States to the above-mentioned circumstances when determining whether a third country included in the EU common list of safe countries of origin is considered as a safe country of origin for a particular applicant as well as during the examination of an application using the procedural facilities provided for in Directive 2013/32/EU in relation to applicants from a safe country of origin. On this basis, the Commission concludes that Albania is a safe country of origin within the meaning of Directive 2013/32/EU.

As regards Bosnia and Herzegovina, its Constitution provides the basis for the sharing of powers between the country's constituent peoples. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. There are no indications of any incidents of *refoulement* of its own citizens. Discrimination or violence against individuals on ethnic or religious grounds or because of their political opinion as well as against individuals belonging to vulnerable groups such as LGBTI, journalists, and children still occurs in individual cases. Bosnia and Herzegovina's membership of the European Convention on Human Rights entails that the possibility of recourse to the European Court of Human Rights is a safeguard guaranteeing effectiveness of the system of remedies against such human rights violations. In 2014, the European Court of Human Rights found violations in five out of 1196 applications. In 2014, Member States considered that 4,6% (330) of asylum applications of citizens from Bosnia and Herzegovina were well-founded. At least nine Member States have designated Bosnia and Herzegovina as a safe country of origin. Particular attention should be paid by Member States to the above-mentioned circumstances when determining whether a third country included in the EU common list of safe countries of origin is considered as a safe country of origin for a particular applicant as well as during the examination of an application using the procedural facilities provided for in Directive 2013/32/EU in relation to applicants from a safe country of origin. On this basis, the Commission concludes that Bosnia and Herzegovina is a safe country of origin within the meaning of Directive 2013/32/EU.

As regards the former Yugoslav Republic of Macedonia, the legal basis for protection against persecution and mistreatment is adequately provided for by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. There are no indications of any incidents of *refoulement* of its own citizens. Isolated cases of discrimination or violence against individuals belonging to vulnerable groups of persons, including children, disabled persons, Roma and LGBTI, still occur. The former Yugoslav Republic of Macedonia's membership of the European Convention on Human Rights entails that the possibility of recourse to the European Court of Human Rights is a safeguard guaranteeing effectiveness of the system of remedies against such human rights violations. In 2014, the European Court of Human Rights found violations in six out of 502 applications. In 2014, Member States considered that 0,9% (70) of asylum applications of citizens of the former Yugoslav Republic of Macedonia were well-founded. At least seven Member States have designated the former Yugoslav Republic of Macedonia as a safe country of origin. The former Yugoslav Republic of Macedonia has been designated as a candidate country by the European Council. Particular attention should be paid by Member States to the above-mentioned circumstances when determining whether a third country included in the EU common list of safe countries of origin is considered as a safe country of origin for a particular applicant as well as during the examination of an application using the

procedural facilities provided for in Directive 2013/32/EU in relation to applicants from a safe country of origin. On this basis, the Commission concludes that the former Yugoslav Republic of Macedonia is a safe country of origin within the meaning of Directive 2013/32/EU.

As regards Kosovo*, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation. The non-accession of Kosovo* to relevant international human rights instruments such as the ECHR results from the lack of international consensus regarding its status as a sovereign State. There are no indications of any incidents of *refoulement* of its own citizens. Discrimination or violence against individuals belonging to vulnerable groups of persons such as women, LGBTI and persons belonging to ethnic minorities, including ethnic Serbs, still occurs in individual cases. In 2014, Member States considered that 6,3% (830) of asylum applications of citizens of Kosovo* were well-founded. At least six Member States have designated Kosovo* as a safe country of origin. Particular attention should be paid by Member States to the above-mentioned circumstances when determining whether a third country included in the EU common list of safe countries of origin is considered as a safe country of origin for a particular applicant as well as during the examination of an application using the procedural facilities provided for in Directive 2013/32/EU in relation to applicants from a safe country of origin. On this basis, the Commission concludes that Kosovo* is a safe country of origin within the meaning of Directive 2013/32/EU.

As regards Montenegro, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. There are no indications of any incidents of *refoulement* of its own citizens. Discrimination or violence against individuals belonging to vulnerable groups of persons, including disabled persons, journalists, Roma and LGBTI, still occurs. Montenegro's membership of the European Convention on Human Rights entails that the possibility of recourse to the European Court of Human Rights is a safeguard guaranteeing effectiveness of the system of remedies against such human rights violations. In 2014, the European Court of Human Rights found violations in 1 out of 447 applications. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro were well-founded. At least nine Member States have designated Montenegro as a safe country of origin. Montenegro has been designated as a candidate country by the European Council and negotiations have been opened. Particular attention should be paid by Member States to the above-mentioned circumstances when determining whether a third country included in the EU common list of safe countries of origin is considered as a safe country of origin for a particular applicant as well as during the examination of an application using the procedural facilities provided for in Directive 2013/32/EU in relation to applicants from a safe country of origin. On this basis, the Commission concludes that Montenegro is a safe country of origin within the meaning of Directive 2013/32/EU.

As regards Serbia, the Constitution provides the basis for self-governance of minority groups in the areas of education, use of language, information and culture. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. There are no indications of any incidents of *refoulement* of its own citizens. Discrimination against individuals belonging to vulnerable groups of persons, including ethnic minorities, including ethnic Albanians, religious minorities, including Muslims, Roma and LGBTI, still occurs. Serbia's membership of the European Convention on Human Rights entails that the possibility of recourse to the

European Court of Human Rights is a safeguard guaranteeing effectiveness of the system of remedies against such human rights violations. In 2014, the European Court of Human Rights found violations in 16 out of 11 490 applications. In 2014, Member States considered that 1,8% (400) of asylum applications of citizens from Serbia were well-founded. At least nine Member States have designated Serbia as a safe country of origin. Serbia has been designated as a candidate country by the European Council and negotiations have been opened. Particular attention should be paid by Member States to the above-mentioned circumstances when determining whether a third country included in the EU common list of safe countries of origin is considered as a safe country of origin for a particular applicant as well as during the examination of an application using the procedural facilities provided for in Directive 2013/32/EU in relation to applicants from a safe country of origin. On this basis, the Commission concludes that Serbia is a safe country of origin within the meaning of Directive 2013/32/EU.

As regards Turkey, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. There are no indications of any incidents of refoulement of its own citizens. Discrimination and human rights violations of persons belonging to vulnerable groups such as minorities, including ethnic Kurds, journalists and LGBTI still occur. Turkey's membership of the European Convention on Human Rights entails that the possibility of recourse to the European Court of Human Rights is a safeguard guaranteeing effectiveness of the system of remedies against such human rights violations. In 2014, the European Court of Human Rights found violations in 94 out of 2899 applications. In 2014, Member States considered that 23,1 % (310) of asylum applications of citizens of Turkey were well-founded. One Member State has designated Turkey as a safe country of origin. Turkey has been designated as a candidate country by the European Council and negotiations have been opened. Particular attention should be paid by Member States to the above-mentioned circumstances when determining whether a third country included in the EU common list of safe countries of origin is considered as a safe country of origin for a particular applicant as well as during the examination of an application using the procedural facilities provided for in Directive 2013/32/EU in relation to applicants from a safe country of origin. On this basis, the Commission concludes that Turkey is a safe country of origin within the meaning of Directive 2013/32/EU.

This proposal should be seen as the first step towards the objective of establishing a comprehensive common list of safe countries of origin at Union level. The Commission may therefore propose the inclusion of further third countries, fulfilling the criteria to be designated as safe, on the EU common list once adopted by the European Parliament and the Council. Priority will be given to third countries from which originate a significant number of applicants for international protection in the EU such as Bangladesh, Pakistan, and Senegal.

As indicated in this proposal, the Commission would present a report after a period of three years following the entry into force of the Regulation if adopted by the European Parliament and of the Council, on the possibility to take further steps of harmonisation that could lead to the elimination of the need for national lists of safe countries of origin.

1.2. Consistency with existing policy provisions in the policy area

This proposal is consistent with the common procedures for granting and withdrawing international protection established by Directive 2013/32/EU and with the other instruments of the Common European Asylum System.

1.3. Consistency with other Union policies

The proposal to establish an EU common list of safe countries of origin and to include, in particular, on such a list third countries that have been designated as candidate country by the European Council is consistent with the Union enlargement policy. When Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Turkey were designated as candidate countries by the European Council, the assessment was that they fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and they will have to continue to fulfil these criteria for becoming a member. Progress in fulfilling the political and economic criteria as well as the alignment with the *acquis* is assessed every year in the Annual Progress Report of the European Commission. The present proposal to include Albania, the former Yugoslav Republic of Macedonia, Montenegro, Serbia, Turkey in the EU common list of safe countries of origin is without prejudice to the upcoming Annual Progress Reports to be presented by the European Commission regarding each of these third countries.

2. CONSULTATION OF INTERESTED PARTIES

The European Council in its conclusions of 25 and 26 June 2015 referred, in relation to the need to accelerate the treatment of asylum applications, to the intention of the Commission to strengthen the safe countries of origin provisions of Directive 2013/32/EU, including the possible establishment of an EU common list of safe countries of origin.

The Justice and Home Affairs Council in its conclusions on safe countries of origin of 20 July 2015 welcomed the possible establishment of an EU common list of safe countries of origin. The Council noted "with regards to the Western Balkans countries that a majority of national lists of safe countries of origin include these countries, that the European Council reiterated on numerous occasions their European perspective and that Albania, Bosnia and Herzegovina, the former Yugoslav Republic of Macedonia, Montenegro and Serbia were transferred to the list of countries whose nationals are exempt from the visa requirement as of 19 December 2009 and 15 December 2010 respectively. Moreover, the EU-wide average asylum recognition rate for the Western Balkans countries was rather low in 2014. This suggests that the Western Balkans countries could be considered as safe countries of origin by all the Member States."

Following the Justice and Home Affairs Council conclusions, EASO organised on 2 September 2015 an expert-level meeting with the Member States where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo* , the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning Directive 2013/32/EU.

3. LEGAL BASIS, SUBSIDIARITY, PROPORTIONALITY, FUNDAMENTAL RIGHTS

3.1. Legal basis

The proposal is based on Article 78(2)(d) of the Treaty on the Functioning of the European Union (TFEU), which is the legal basis for measures on common procedures for the granting and withdrawing of uniform asylum and subsidiary protection status. The proposal aims at establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU and at amending this Directive, which was adopted on the basis of Article 78(2)(d) TFEU.

3.2. Subsidiarity

Title V of the TFEU on the Area of Freedom, Security and Justice confers certain powers on these matters to the European Union. These powers must be exercised in accordance with Article 5 of the Treaty on the European Union, i.e. if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can, therefore, by reason of the scale or effects of the proposed action, be better achieved by the European Union.

The proposal aims at establishing a common list of safe countries of origin at Union level as it will facilitate the use by all Member States of the procedures linked to the application of the safe country of origin concept. The proposal also aims at addressing some of the existing divergences between Member States' national lists of safe countries of origin, as a result of which applicants for international protection originating from the same third countries are not always subject to the same procedures in the Member States. The overall objective of the proposed action is not sufficiently achieved by the Member States and can be better achieved by the European Union.

3.3. Proportionality

In accordance with the principle of proportionality, the proposed modifications of the existing legislative framework do not go beyond what is necessary to achieve the objective set. The EU common list of safe countries of origin will be established in accordance with the criteria already set by Directive 2013/32/EU for the designation of safe countries of origin, and there will be a regular review of the countries on the common list. As for the proposed amendments of Directive 2013/32/EU there are limited to what is necessary to ensure that the provisions of Directive 2013/32/EU related to the application of the safe country of origin concept are applicable to the third countries on the EU common list of safe countries of origin.

3.4. Choice of the instrument

The choice of a Regulation for establishing an EU common list of safe countries of origin is justified by the nature of such a common list, which is established at Union level and should be directly applicable in the legal orders of the Member States.

3.5. Fundamental rights

This proposal respects the fundamental rights and observes the principles recognized by the Charter, including the right to asylum and protection against *refoulement* as provided for in Articles 18 and 19 of the Charter.

In particular it is recalled that, in line with Directive 2013/32/EU, the circumstance that a third country will be on the EU common list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country and will not dispense therefore with the need to conduct an appropriate individual examination of their applications for international protection. It is also recalled that, where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.

The third countries for which the inclusion on the EU common list of safe countries of origin is proposed fulfil the conditions set by Directive 2013/32/EU for being designated as safe. This implies that, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there are in these countries generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.

4. BUDGETARY IMPLICATIONS

The proposal entails no implication for the EU budget and should have no budgetary implications for the Member States.

5. OTHER ELEMENTS

5.1. Monitoring, evaluation and reporting arrangements

The proposal foresees that the possibility to take in the future further steps of harmonisation that could lead to the elimination of the need for national lists of safe countries of origin should be considered after a period of three years following the entry into force of this Regulation, on the basis of a report to be presented by the Commission.

5.2. Detailed explanation of the specific provisions of the proposal

The proposal for a Regulation establishes an EU common list of third countries which shall be regarded as safe countries of origin within the meaning of Directive 2013/32/EU. It also amends Directive 2013/32 in order to enable the application of the safe country of origin provisions of this Directive in relation to the third countries included in the EU common list.

The EU common list of safe countries of origin is to be set out in Annex I of the proposed Regulation. Third countries to be included in this Annex shall fulfil the conditions set in Annex I of Directive 2013/32/EU for the designation of safe countries of origin. The Commission considers that Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo*, Montenegro, Serbia and Turkey fulfil these conditions and should, as a first step, be included in the EU common list.

The proposal provides for an obligation for the Commission to regularly review the situation in third countries that are on the EU common list, based on a range of sources of information, including in particular regular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.

The proposal provides that any amendment of the EU common list of safe countries of origin shall be adopted in accordance with the ordinary legislative procedure. However, it is foreseen that, in case of sudden changes for the worse in the situation of a third country on this list, the Commission shall be empowered to adopt a delegated act in accordance with Article 290 TFUE to suspend, for a period of one year, the presence of the third country from the list where it considers, on the basis of a substantiated assessment, that the conditions for regarding a third country as safe country of origin are no longer met. The Commission would be able to extend the suspension for a period of maximum one year, where it has proposed an amendment to the Regulation in order to remove this third country from the EU common list of safe countries of origin. The proposal contains detailed provisions on the conditions of the delegation of power to the Commission, including regarding its duration, the possibility for the European Parliament and the Council to revoke it at any time, the obligation for the Commission to notify the adoption of delegated acts to the European Parliament and to the Council and the fact that the delegated acts can only enter into force if no objection has been raised by these institutions within one month following this notification.

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2)(d) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2013/32/EU of the European Parliament and of the Council⁷ enables Member States to apply specific procedural rules, in particular accelerated and border procedures, in well-defined circumstances where an application for international protection is likely to be unfounded, including where the applicant is a national of a country that has been designated as safe country of origin by national law and that, in addition, may be considered as safe for the applicant concerned in light of his or her particular circumstances. The same rules can be applied in the case of stateless persons in relation to third countries in which they were formerly habitually resident.
- (2) Directive 2013/32/EU sets out common criteria for the designation of safe third countries of origin at national level. However, only certain Member States have designated in their national law safe countries of origin, which means that not all Member States currently can make use of the related procedural facilities provided for in Directive 2013/32/EU. In addition, due to existing divergences between the national lists of safe countries of origin that have been adopted by the Member States, which could result from differences in the assessment of the safety of certain third countries or from differences in the nature of the flows of third country nationals they are facing, the concept of safe country of origin as defined in Directive 2013/32/EU is currently not always applied by the Member States in respect of the same third countries.
- (3) In light of the very sharp increase that has been experienced since 2014 in the number of applications for international protection made in the Union and the resulting

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ 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 (OJ L 180, 29.6.2013, p. 60).

unprecedented pressure on Member States' asylum systems the Union acknowledged the need to strengthen the application of the safe country of origin provisions of Directive 2013/32/EU, as an essential tool to support the swift processing of applications that are likely to be unfounded. In particular, in its conclusions of 25 and 26 June 2015, the European Council referred, in relation to the need to accelerate the treatment of asylum applications, to the intention of the Commission as set out in its Communication on a European Agenda on Migration⁸ to strengthen these provisions, including the possible establishment of an EU common list of safe countries of origin. Moreover, the Justice and Home Affairs Council in its conclusions on safe countries of origin of 20 July 2015 welcomed the intention of the Commission to strengthen the safe countries of origin provisions in Directive 2013/32/EU, including the possible establishment of an EU common list of safe countries of origin.

- (4) An EU common list of safe countries of origin should be established on the basis of the common criteria set in Directive 2013/32/EU as it will facilitate the use by all Member States of the procedures linked to the application of the safe country of origin concept and, thereby, increase the overall efficiency of their asylum systems as concerns applications for international protection which are likely to be unfounded. The establishment of an EU common list will also address some of the existing divergences between Member States' national lists of safe countries of origin, whereby applicants for international protection originating from the same third countries are not always subject to the same procedures in the Member States. While Member States should retain the right to apply or introduce legislation that allows for the national designation of third countries other than those appearing on the EU common list as safe countries of origin, the establishment of such a common list will ensure that the concept is applied by all Member States in a uniform manner in relation to applicants whose countries of origin are on this list. This will accordingly facilitate convergence in the application of procedures and thereby also deter secondary movements of applicants for international protection. In that context, the possibility to take in the future further steps of harmonisation that could lead to the elimination of the need for national lists of safe countries of origin should be considered after a period of three years following the entry into force of this Regulation, on the basis of a report to be presented by the Commission.
- (5) The provisions of Directive 2013/32/EU related to the application of the safe country of origin concept should be applicable in relation to third countries that are on the EU common list established by this Regulation. This means, in particular, that the circumstance that a third country is on the EU common list of safe countries of origin cannot establish an absolute guarantee of safety for nationals of that country and does not dispense therefore with the need to conduct an appropriate individual examination of the application for international protection. In addition, it should be recalled that, where an applicant shows that there are serious reasons to consider the country not to be safe in his or her particular circumstances, the designation of the country as safe can no longer be considered relevant for him or her.
- (6) The Commission should regularly review the situation in third countries that are on the EU common list of safe countries of origin. In case of sudden change for the worse in the situation of a third country on the EU common list, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union

⁸ COM (2015) 240 final, 13.5.2015.

should be delegated to the Commission in respect of suspending the presence of this third country from the EU common list for a period of one year where it considers, on the basis of a substantiated assessment, that the conditions set by Directive 2013/32/EU for regarding a third country as safe country of origin are no longer met. For the purpose of this substantiated assessment, the Commission should take into consideration a range of sources of information at its disposal including in particular, its Annual Progress Reports for third countries designated as candidate countries by the European Council, regular reports from the European External Action Service (EEAS) and the information from Member States, the European Asylum Support Office (EASO), the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe and other relevant international organisations. The Commission should be able to extend the suspension of the presence of a third country from the EU common list for a period of maximum one year, where it has proposed an amendment to this Regulation in order to remove this third country from the EU common list of safe countries of origin. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (7) Following the conclusions on safe countries of origin of the Justice and Home Affairs Council of 20 July 2015, where Member States have agreed that priority should be given to an assessment by all Member States of the safety of the Western Balkans, EASO organised on 2 September 2015 an expert-level meeting with the Member States where a broad consensus was reached that Albania, Bosnia and Herzegovina, Kosovo⁹, the former Yugoslav Republic of Macedonia, Montenegro and Serbia should be considered as safe countries of origin within the meaning Directive 2013/32/EU.
- (8) In accordance with Directive 2013/32/EU a country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU of the European Parliament and of the Council¹⁰, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.
- (9) Based on a range of sources of information, including in particular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations, a number of third countries are considered to qualify as safe countries of origin.
- (10) As regards Albania, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in four

⁹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.

¹⁰ Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (OJ L 337, 20.12.2011, p. 9).

out of 150 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 7,8% (1040) of asylum applications of citizens from Albania were well-founded. At least eight Member States have designated Albania as a safe country of origin. Albania has been designated as a candidate country by the European Council. At that time the assessment was that Albania fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Albania will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.

- (11) As regards Bosnia and Herzegovina, its Constitution provides the basis for the sharing of powers between the country's constituent peoples. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in five out of 1196 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 4,6% (330) of asylum applications of citizens from Bosnia and Herzegovina were well-founded. At least nine Member States have designated Bosnia and Herzegovina as a safe country of origin.
- (12) As regards the former Yugoslav Republic of Macedonia, the legal basis for protection against persecution and mistreatment is adequately provided by principle substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in six out of 502 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 0,9% (70) of asylum applications of citizens of the former Yugoslav Republic of Macedonia were well-founded. At least seven Member States have designated the former Yugoslav Republic of Macedonia as a safe country of origin. The former Yugoslav Republic of Macedonia has been designated as a candidate country by the European Council. At that time the assessment was that the former Yugoslav Republic of Macedonia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and the former Yugoslav Republic of Macedonia will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (13) As regards Kosovo*, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation. The non-accession of Kosovo* to relevant international human rights instruments such as the ECHR results from the lack of international consensus regarding its status as a sovereign State. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 6,3% (830) of asylum applications of citizens of Kosovo* were well-founded. At least six Member States have designated Kosovo* as a safe country of origin.
- (14) As regards Montenegro, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 1 out

of 447 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 3,0 % (40) of asylum applications of citizens of Montenegro were well-founded. At least nine Member States have designated Montenegro as a safe country of origin. Montenegro has been designated as a candidate country by the European Council and negotiations have been opened. At that time the assessment was that Montenegro fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Montenegro will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.

- (15) As regards Serbia, the Constitution provides the basis for self-governance of minority groups in the areas of education, use of language, information and culture. The legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 16 out of 11 490 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 1,8% (400) of asylum applications of citizens from Serbia were well-founded. At least nine Member States have designated Serbia as a safe country of origin. Serbia has been designated as a candidate country by the European Council and negotiations have been opened. At that time the assessment was that Serbia fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Serbia will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (16) As regards Turkey, the legal basis for protection against persecution and mistreatment is adequately provided by substantive and procedural human rights and anti-discrimination legislation, including membership of all major international human rights treaties. In 2014, the European Court of Human Rights found violations in 94 out of 2899 applications. There are no indications of any incidents of refoulement of its own citizens. In 2014, Member States considered that 23,1 % (310) of asylum applications of citizens of Turkey were well-founded. One Member State has designated Turkey as a safe country of origin. Turkey has been designated as a candidate country by the European Council and negotiations have been opened. At that time the assessment was that Turkey fulfilled the criteria established by the Copenhagen European Council of 21-22 June 1993 relating to stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities and Turkey will have to continue to fulfil these criteria for becoming a member in line with the recommendations provided in the Annual Progress Report.
- (17) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (18) This Regulation respects the fundamental rights and observes the principles recognized by the Charter.

- (19) [In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, those Member States have notified their wish to take part in the adoption and application of this Regulation]

OR

[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, those Member States are not taking part in the adoption of this Regulation and are not bound by it or subject to its application.]

OR

[In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, the United Kingdom is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]

OR

[In accordance with Article 3 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, the United Kingdom has notified (, by letter of ...,) its wish to take part in the adoption and application of this Regulation.]

In accordance with Articles 1 and 2 of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.]

- (20) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter

This Regulation establishes an EU common list of third countries which shall be regarded as safe countries of origin within the meaning of Directive 2013/32/EU.

Article 2

EU common list of safe countries of origin

1. Third countries listed in Annex I to this Regulation are safe countries of origin.
2. The Commission shall regularly review the situation in third countries that are on the EU common list of safe countries of origin, based on a range of sources of information, including in particular regular reporting from the EEAS and information from Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.
3. Any amendment of the EU common list of safe countries of origin shall be adopted in accordance with the ordinary legislative procedure.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 3 to suspend the presence of a third country from the EU common list of safe countries of origin.

Article 3

Removal of a third country from the EU common list of safe countries of origin in case of sudden change of situation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. In case of sudden changes in the situation of a third country that is on the EU common list of safe countries of origin, the Commission shall conduct a substantiated assessment of the fulfilment by that country of the conditions set in Annex I of Directive 2013/32/EU and, if those conditions are no longer met, shall adopt, in accordance with Article 290 TFUE, a Decision suspending the presence of that third country from the EU common list for a period of one year.
3. Where the Commission has proposed an amendment to this Regulation in order to remove a third country from the EU common list of safe countries of origin, it can on the basis of a substantial assessment referred to in paragraph 2 extend the validity of the delegated decision adopted pursuant to paragraph 2 for a period of maximum one year.
4. The power to adopt delegated acts referred to in this Article shall be conferred on the Commission for a period of 5 years from [the date of entry into force of this Regulation]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
5. The delegation of power referred to in this Article may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the

delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

6. As soon as it adopts a delegated act in accordance with this Article, the Commission shall notify it simultaneously to the European Parliament and to the Council.

7. A delegated act adopted pursuant to this Article shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of one month of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object.

Article 4

Amendments to Directive 2013/32/EU

Directive 2013/32/ EU is amended as follows:

(1) In Article 36 paragraph 1 is replaced by the following:

“1. A third country designated as a safe country of origin in accordance with this Directive by national law or that is on the EU common list of safe countries of origin established by Regulation (EU) No XXXX/2015 of the European Parliament and of the Council* [this Regulation] may, after an individual examination of the application, be considered as a safe country of origin for a particular applicant only if:

(a) he or she has the nationality of that country; or

(b) he or she is a stateless person and was formerly habitually resident in that country,

and he or she has not submitted any serious grounds for considering the country not to be a safe country of origin in his or her particular circumstances and in terms of his or her qualification as a beneficiary of international protection in accordance with Directive 2011/95/EU.”

(2) In Article 37 paragraph 1 is replaced by the following:

“1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin other than those on the EU common list of safe countries of origin established by Regulation (EU) No XXXX/2015 [this Regulation] for the purposes of examining applications for international protection”.

(3) In Annex I the title is replaced by the following:

“Designation of safe countries of origin for the purposes of Article 36 and Article 37(1)”.

* Regulation (EU) No XXXX/2015 of the European Parliament and of the Council of [date] establishing an EU common list of safe countries of origin for the purposes of Directive 2013/32/EU, and amending Directive 2013/32/EU

Article 5

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament
The President

For the Council
The President



Brussels, 9.9.2015
COM(2015) 452 final

ANNEX 1

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**

ANNEX

EU common list of safe countries of origin referred to in Article 2

Albania,

Bosnia and Herzegovina,

the former Yugoslav Republic of Macedonia,

Kosovo*¹,

Montenegro,

Serbia,

Turkey.

¹ * This designation is without prejudice to positions on status, and is in line with UNSCR 1244/99 and the ICJ Opinion on the Kosovo declaration of independence.