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**Position Paper**

# Safe countries of origin

*"In the past, we have witnessed a practice that differentiates people based on their nationality. Those coming from sub-Saharan African countries, for instance, are typically considered 'safe' and are thus issued deportation orders as soon as they arrive on the EU territory. In many cases, they are not informed of their protection possibilities, and the national authorities and European agencies present, thus effectively refrain from giving them opportunities to claim asylum. Caritas is concerned that this approach may be reinstated and that deportation measures will be expedited as a result of an applicant's country of origin,"*

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## Introduction

As the EU endeavours to develop and implement its 2015 Migration Agenda, new policies are being developed to streamline and expedite the processing of asylum claims. The European Commission proposed in this context a common EU list of "safe countries of origin".

The concept of "safe country of origin" has already been in use in the EU, with national lists, requiring asylum applicants to prove that they are not coming from safe countries of origin, as identified in the national lists. According to this, there has been an assumption that based on the general political situation in the country of origin a sufficient guarantee exists that neither political persecution nor inhumane or humiliating punishment or treatment is being carried out. A person entering an EU Member State from such a country could refute this legal assumption only by producing facts or evidence that he or she was in danger of being politically persecuted in the country of origin, contrary to the general assumption prevailing there.[1] In cases when the asylum applicant was unable to refute this, he/she was rejected as manifestly unfounded. A consequence of this has been that EU Member States have been able to speed up the asylum process and effectively weed out cases that were likely to be rejected with the lasting consequence of reducing the number of asylum applicants accepted in a certain EU Member State.

Now with the new Commission proposal, the intention is to harmonise the list of safe countries of origin across the EU. For a number or reasons, Caritas Europa is very concerned by this new proposal.

## Caritas Europa's concern regarding a list of safe countries of origin

According to the observations of Caritas Europa members working on the ground in response to the needs of migrants and refugees, applications from asylum seekers from countries of origin deemed "safe" receive less favourable procedural treatment than those from other non-EU countries. If applicants from "safe" countries are unable to provide sufficient evidence to refute the presumption of safety in their individual case, their claims can be judged as unfounded or manifestly unfounded, and thus become subject to accelerated procedures and shortened periods for appealing first instance decisions. As a

[1] Pfohman 2012.

consequence, we observe the concept of safe third country effectively being used to delineate en masse whole populations of people perceived as "worthy" of receiving asylum protection from those considered safe to return home. Caritas Europa is very concerned by the recent proposal for a common EU list of "safe countries of origin" and the use of the concept of safe countries of origin in general. Already in 1989, migration expert Kay Hailbronner exposed the dangers of such an approach, noting the greatest difficulty in deciding which country is to be deemed safe and who should decide which countries to add to the list. Moreover, "political changes and human rights conditions change so rapidly that any such list quickly becomes inaccurate following its completion".[2]

Caritas Europa reminds that the 1951 Geneva Convention requires that refugees have an individual right to claim asylum and are not treated on the basis of their country of origin, as this would otherwise warrant as grounds of discrimination based on nationality. With the safe country of origin principle, the nationality of an asylum seeker determines automatically the treatment s/he will receive, and in particular the possibility of appeal to an asylum decision. It is the purpose of the asylum procedure to determine the protection needs of an individual according to his/her individual circumstances. Because of the gravity of such a decision on the one hand, and the already very problematic basis for decision-making on the other hand (e.g. fear and traumatisation, preventing people from speaking out, inadequate or insufficient information and evidence due to typical flight circumstances, language and communication barriers, etc.), there seems to be only little room for fast-tracking the procedure while also retaining an effective opportunity for refuting the presumption of safety. Experience shows that even in ordinary first instance procedures the protection needs are often not correctly determined, leading to an overturning decision in the next instance.

Another concern for us is the fact that the national lists currently differ greatly, showing that Member States have different definitions of what is deemed a safe country. This alludes to the difficulty, if not impossibility, of determining which country is safe and which is not and keeping it constantly updated and maintained. In addition, the safe nature of a country depends also of one's belonging to a particular group. For instance, a country perceived as safe for the majority of the population might be truly dangerous for specific groups, such as women, children, ethnic minorities, among others.

An additional concern lies in the criteria of the countries appearing on the list itself. The proposed EU list would initially comprise seven states: Albania, Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia, Kosovo, Montenegro, Serbia and Turkey. These seven include the five current candidate countries for EU accession, along with Bosnia and Herzegovina and Kosovo. While the proposal for legislation claims that the "Copenhagen criteria" for EU accession - comprising democratic institutions, stability, rule of law and accession to major international human rights instruments - have been met by the five candidate countries on the list, the European Council on Refugees and Exiles (ECRE) notes that "this finding seems an inaccurate and misleading generalisation of the progress reports issued as part of the EU enlargement process, which consistently highlight critical deficiencies and weaknesses in these areas".[3] The same thing can be said on the belonging to the Council of Europe. As showed by ECRE, "the indicators relating to a country's membership of the Council of Europe and status as an accession country to the EU show little relevance to the assessment of the observance of human rights in practice in those countries".[4] Moreover, while the accessing process and decisions made within it are of a predominantly political nature, the designation as safe country must rest upon a purely legal assessment.

[2] Ibid; Legomsky 1998.
[3] ECRE Comments on the Proposal for a Regulation of the European Parliament and of the Council establishing an EU common list of safe countries of origin and amending the recast Asylum Procedures Directive COM(2015) 452)
[4] Idem

**Recommendations**

Consequently, Caritas Europa urges the Commission and EU Member States to refrain from using the safe country of origin concept, including through the adoption of national lists.

If the "safe country of origin" proposal is adopted, the EU should nevertheless:

- Guarantee an individual right to claim asylum to all people, even those coming from a country deemed safe;
- Guarantee the exhaustiveness of the EU list, not allowing for more extensive national lists. No reason can justify the fact that Member States designate a country as safe while EU institutions do not recognise it as safe.
- Ensure that asylum seekers originating from a country presumed safe have access to quality asylum processes, appeal with automatic suspensive effect to ensure objective individual examination of the protection needs of asylum claims. During the entire procedure, asylum seekers must be entitled to the right to reception;
- Ensure that the EU list of safe countries is based on an objective and up-to-date assessment of the human rights situation; in case of any significant changes in the situation of a country, the Commission shall conduct a substantiated assessment to verify whether that country fulfils the conditions of Annex I of the Asylum Procedures Directive, based on the sources of information mentioned in Article 2(2) and the expert opinion of UNHCR and other organisations concerned with the protection of human rights. If relevant information, in particular coming from the UNCHR or organisations concerned with the protection of human rights, casts serious doubt on the country in question being continually compliant with the relevant criteria, the effect of the designation of this country as safe must be temporarily suspended for the time of the review process;
- Introduce an ordinary assessment procedure to be conducted at least annually, to verify whether each country on the list continually fulfils the conditions of Annex I of the Asylum Procedures Directive, based on the sources of information mentioned above. The prolongation of the designation should require a positive decision in regard to each country;
- Include safeguards to allow challenging the prolongation of the designation of a particular country as safe before the court;
- Take into account the specific situation of some groups, such as women, children, minorities. A country might be safe for one part of the population but dangerous for some particular groups, depending on sex, age, ethnic background, political activities, among others;
- Refrain from using references to criteria related to a country's membership in the Council of Europe and status as an accession country to the EU.

We also call specifically on the European Parliament to:

- Ensure that countries mentioned in the list of safe countries of origin respect the fundamental rights of their population and show the necessary guarantees of Rule of Law, through its power of control of the procedure.