



**Ad-Hoc Query on the concept of safe country of origin in relation to
Albania, Kosovo, Macedonia (FYROM), Serbia, Montenegro, Bosnia and Herzegovina**

Requested by FI EMN NCP on 5th February 2015

Compilation produced on 30th March 2015

**Responses from Austria, Belgium, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia,
Lithuania, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Sweden plus Norway (20 in Total)**

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1. Background Information

The concept of safe country of origin (SCO) is defined in Article 36 of the recast Asylum Procedures Directive (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). The grounds for the assessment of whether a country is a safe country of origin are further listed in Article 37, Section 3 of the Directive.

Finnish Immigration Service is currently assessing, whether the concept of safe country of origin should be applied in relation to Albania, Kosovo, Macedonia (FYROM), Serbia, Montenegro, Bosnia and Herzegovina. Therefore, the Finnish Immigration Service would like to know, what the practice is in other Member States and Norway.

Questions:

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1. Does your Member State consider the following countries to be safe countries of origin in accordance with Article 36 of the recast Asylum Procedures Directive, and if yes, based on which of the grounds listed in Article 37, Section 3 of the Directive:

- a) Albania
- b) Kosovo
- c) Macedonia (FYROM)
- d) Serbia
- e) Montenegro
- f) Bosnia and Herzegovina

2. In case the above mentioned country/countries are considered to be safe country/countries of origin please give examples of the reasoning used in international protection decisions, official national guidelines etc. (e.g. reference to the ratification and observance of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by the country in question, observations of the UN Committee against Torture such as the following: http://www.univie.ac.at/bimtor/dateien/albania_cat_2012_concob.pdf, etc.).

We would very much appreciate your responses by **5 March 2015**:

2. Responses

		Wider Dissemination?	
	Austria	Yes	<p>1. According to Art. 1 “Countries of origin ordinance” (which determines countries as safe countries of origin), all of the countries mentioned in the query are deemed safe countries of origin.</p> <p>This ordinance is based on Art. 19 para 5 subpara 2 Federal Office for Immigration and Asylum Procedures Act and according to the cited provision, account shall be taken of the existence or absence of state persecution, protection from persecution by private actors and legal protection against suffered human rights violations, in order to assess if a certain country can be regarded as safe country of origin and be included in the ordinance.</p> <p>According to the explanatory notes of the government bill of the Federal Office for Immigration and Asylum Procedures Act generally assessments as safe countries of origin are also based on the following requirements: ratification of all international Conventions for the protection of Human Rights applicable for this region, no relevant persecution or violation of human rights and no execution of the death penalty.</p> <p>Currently a legislative package is being elaborated, in which amongst others the establishment of an accelerated procedure within the meaning of Art. 31 para 8 of the Procedure Directive is planned.</p>

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			<p>2. Decisions concerning international protection issues contain a country statement which gives information about the economic, political, security, human rights, minority rights as well as social situation in the applicant's home country.</p> <p>These country statements are supplied with information from a range of different sources, as for example reports from governmental agencies (including from other Member States such as Germany and the UK), human rights reports (for example from Amnesty International, the Council of Europe and UNHCR), reports of the European Commission and media articles.</p> <p>Examples of sources cited in the respective country statements of international protection decisions: reports of the Federal Foreign Office and the Federal Office for Migration and Refugees of Germany, reports of the European Commission against Racism and Intolerance (ECRI), Progress Reports of the European Commission, Amnesty International reports, reports by the Council of Europe Commissioner for Human Rights, country reports on human rights practices by the U.S. Department of State, operational guidance notes by the UK Home Office, OSCE Mission reports, Report of the Secretary-General/United National Security Council, UNHCR guidelines, reports by the Austrian Federal Ministry for Europe, Integration and Foreign Affairs and the Federal Ministry of the Interior.</p>
	Belgium	Yes	<p>1. Yes, The current list of safe countries of origin was updated on 15 May 2014 and contains 7 countries: Albania, Bosnia-Herzegovina, FYROM, Kosovo, Serbia, Montenegro and India. (This is the the list with the same seven safe countries of origin that was adopted for the first time in 2012).</p> <p>2. On 24 November 2011 Belgium introduced the possibility to designate safe countries of origin and the Royal Decree implementing this concept came into force on 1 June 2012. The Minister or State Secretary for Asylum and the Minister for Foreign Affairs have to submit, after an advice of the Office of the Commissioner General for Refugees and Stateless Persons (the determining authority), a list of safe countries to the government for consideration. The reasoning is that countries can be considered as a safe country of origin if the rule of law in a democratic system and the general political circumstances allow to conclude that in a general and durable manner there is no persecution or real risk of serious harm, taking into consideration the laws and regulations and the legal practice in that country, the respect for the fundamental rights and freedoms of the ECHR and of the principle of non-refoulement and the availability of an effective remedy against violations of these rights and principles.</p> <p>To contest the "presumption of safety of their country of origin", it has to appear clearly from the asylum applicants declarations that they have a well-founded fear of persecution as determined in the refugee definition in the 1951 Geneva Convention or runs a real risk of serious harm as determined in the subsidiary protection definition.</p> <p>According to the law, the list must be reviewed at least once a year. If there is a need, the list can be updated at any time.</p> <p>Appeals at the Constitutional Court and at the Council of State challenging the <u>legal concept of safe countries</u> of origin and the Royal Decree respectively, have both been rejected. However, the Constitutional Court found the legal provision <u>limiting the scope and suspensive effect of an appeal</u> against a non-admissibility decision for an asylum seeker from a safe country to be in violation of the right to an effective remedy as guaranteed by article 13 of the ECHR. Following the judgment, in March 2014 the Parliament adopted a law introducing a full judicial review appeal against inadmissibility decisions concerning applications from safe countries of origin. The new law was published on 21 May 2014 and entered into force on 1 June 2014).</p>
	Czech Republic	Yes	<p>1. The Czech Republic considers all the above-mentioned countries to be safe countries of origin.</p>

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			<p>The Czech Republic is currently in the process of implementing of the articles 36 and 37 of the Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 to its national legislation.</p> <p>2. All the above-mentioned safe countries of origin meet the requirements which are stated in the Czech Asylum Act (326/1999 Coll.), section 2, par. 1. According to the Czech Asylum Act (326/1999 Coll.), section 2, par. 1: A safe country of origin means the country of which the foreign national is a citizen or, if the foreign national is a stateless person, the country of his/her last permanent residence,</p> <p>a) where the government respects human rights and is capable of ensuring respect of human rights and legal regulations, b) which is not left by its citizens or stateless persons for reasons referred to in Section 12 or 14a, c) which has ratified and complies with international agreements on human rights and fundamental freedoms, d) which allows legal entities supervising the state of compliance with human rights to carry out their activities.</p> <p>The safe countries of origin are also determined according to the articles 36 and 37 of the 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 (currently being implemented to our legislation system).</p>
	Estonia	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Finland	Yes	<p>1. a) – f) Finland does not consider these countries to be safe countries of origin. However, the Finnish Immigration Service is currently assessing, whether the concept of safe country of origin should be applied in relation to the countries listed above.</p> <p>2. –</p>
	France	Yes	<p>1. As listed in the French list of safe countries of origin and among the above mentioned countries, only Kosovo is not considered as a safe country of origin. To date and in application of the article L. 741-4 of the Code of Entry and Residence of Foreigners and the Right for Asylum (CESEDA), “a country is considered as [safe] if it ensures respect of principles of freedom, democracy and rule of law, as well as human rights and fundamental freedoms.” “The management board defines the general orientations concerning the activity of the French Office for the Protection of Refugees and Stateless Persons (OFPRA) as well as the conditions set out in the community dispositions in this matter, the list of countries considered at the national level as safe countries of origin, and mentioned at the second section of the article L.741-4” (article L.722-1 of the CESEDA).</p> <p>2. If the question concerns the reasons for taking decisions, here are some elements of answers: The affiliation to a country of origin considered as safe has most of all consequences in matter of asylum law during the asylum application’s examination. But the application through the OFPRA remains the same as the application made by a third-country national coming from a country of origin that is not considered as safe. To the extent that “taking into account the characteristic ‘safe’ of a country of origin cannot be an obstacle to the individual examination of each application” (article L.741-4 of the CESEDA), the decision is generally based on the presence/absence of personalized elements that</p>

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			allow to consider as established persecutions or serious alleged threats and on the impossibility/possibility for the asylum seeker to benefit from an effective protection from the state authority.
	Germany	Yes	<p>Although we have increasing numbers of applicants- especially from Kosovo- neither Kosovo nor Albania, Montenegro are listed as "safe countries of origin" (according to Article 37 of the Directive 2013/32) so far. Since October 2014 Serbia, Macedonia, Bosnia and Herzegovina are added to the list of safe countries of origin according to the Directive 2013/32 and Art.16a GG (German Constitution); § 29a AsylVfG (Asylum Procedure Act). The Balkan-states were listed because most applicants leave these countries for economic reasons. The states are regarded as stable and democratic in general and towards minorities.</p> <p>All ratings need a federal law that means a legislation act by the parliament. This is a principle stated in our German Constitution (Grundgesetz) in Art 16a (3) GG. Ratings cannot be made by administrative acts or internal instructions. (see Article 37 (1) of the Directive 2013/32/EU). Germany regularly examines the list. The classification as "safe country of origin" is based on national and international data and jurisdiction of the High Court. It accords with Art. 37 (3) of the Directive.</p> <p>In spite of that the applicant may submit serious reasons to disprove that his/ her country of origin is safe for himself/herself. (Art.36 (1b)). The question of "Subsidiary protection" is not affected by § 29a AsylVfG but needs to be proved carefully. The caseworker is supported by internal instructions and information about the countries.</p>
	Hungary	Yes	In general, Hungary considers these countries to be safe countries of origin; nevertheless, international protection applications are examined on a case-by-case basis, therefore, in light of Act LXXX of 2007 on asylum provides that in case the country of origin of the asylum seeker is considered a safe country of origin according to Hungary, the asylum seeker bears the burden of proof to verify that his/her country of origin does not comply with the criteria defining the concept of safe country of origin (given the case-by-case basis, we cannot provide examples of reasoning).
	Ireland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Italy	Yes	<p>Italy has not drafted a list of safe countries of origin yet. The implementation of Directive 2013/32/EU, which is expected by July 2015, will be an opportunity to identify such countries.</p> <p>For this reason, this question cannot be answered at the moment.</p>
	Latvia	Yes	<ol style="list-style-type: none"> 1. Due to the fact that we have not had asylum seekers from the countries listed above the issue on application of concept safe country of origin in that context has not been examined. 2. N/A.
	Lithuania	Yes	Lithuania doesn't have a predefined list of safe countries or safe countries of origin. Each asylum case is examined individually.

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	Luxembourg	Yes	<p>1. Yes. Luxembourg has a list of safe countries established in the Grand-ducal regulation of 21 December 2007 fixing the list of safe countries as mentioned in the amended law of 5 May 2006 on the right of asylum and complementary forms of protection (Asylum law). It has been modified by Grand-ducal regulations of 1 April 2011 and of 19 June 2013. The list of safe countries includes: Albania, Bosnia and Herzegovina, Former Yugoslav Republic of Macedonia, Kosovo, Montenegro and Serbia. Albania, Bosnia and Herzegovina, Macedonia and Montenegro figure in the list since 21 December 2007, Serbia since 1 April 2011 and Kosovo since 19 June 2013.</p> <p>2. According to Article 16 (4) of the Asylum law, the Minister may apply the safe third country concept only when he is satisfied that the applicant will be treated in accordance with the following principles in the third country concerned:</p> <p>(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;</p> <p>(b) the principle of non-refoulement in accordance with the Geneva Convention is respected;</p> <p>(c) the prohibition of removal, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, is respected; and</p> <p>(d) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.</p> <p>According to Article 21 (2) of the Asylum law, a country which is designated a safe country of origin may only be regarded, following an individual examination of the application for international protection, as a safe country of origin for an applicant if he/she possesses the nationality of that country or formerly had his/her habitual residence in that country and the applicant has not put forward any valid grounds for believing that the country in question is not a safe country of origin in his/her particular circumstances.</p> <p>A grand ducal regulation can enact a country as a safe country of origin if it is established that in that country there is no general and constant persecution as laid out in the Geneva convention. The criteria taken into consideration are:</p> <p>(a) the respect of the rights and freedoms established in the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment are observed;</p> <p>(b) the respect of the principle of non-refoulement in accordance with the Geneva Convention;</p> <p>(c) if there is an effective appeal system against any violation of these rights and freedoms.</p>
	Malta	Yes	<p>The Refugees Act (Chapter 420 of the Laws of Malta) provides a list of countries that are considered as safe countries of origin. The list of safe countries of origin can be accessed at: http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8886&l=1. Serbia is not found in the safe country of origin list.</p>
	Netherlands	Yes	<p>The Dutch Aliens Act includes a paragraph concerning the 'safe countries'. The safe country of origin is part of that paragraph. The Netherlands have no list of safe countries.</p> <p>In the Dutch Aliens Act it is obliged to consider whether a country is a state party to the Geneva Convention of 1951, and the ECHR or the Convention against Torture and other cruel human or degrading treatment. The applicant has to make it plausible that his country of origin does not fulfil its obligations of these conventions. If he does not do so, the country is considered to be safe.</p>

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	Poland	Yes	Act of 13 June 2003 on granting protection to foreigners on the territory of the Republic of Poland (Journal of Laws of 2012., item 680) does not provide for the use of the concept of the so-called safe country/countries of origin, as referred to in Article 36 of the recast Asylum Procedures Directive (Directive 2013/32/EC of 26 June 2013). Therefore, such a list of safe country/countries of origin was never developed and it is not possible to indicate whether countries like Albania, Kosovo, Macedonia, Serbia, Montenegro and Bosnia and Herzegovina meet the criteria for a safe country of origin. For that reason, any request made by a person originating from one of the abovementioned countries are verified on an individual basis, using current information on the country of origin. What is more, the legislative work which are currently conducted and aimed at transposing the 2013/32/EC Directive does not provide for the possibility of procedural use of the safe country of origin.
	Slovak Republic	Yes	1. From the abovementioned list of countries, Slovak Republic considers Montenegro as a safe country of origin. 2. In 2013, Montenegro was included into the list of safe countries of origin based on the following facts: Montenegro ratified necessary international human rights instruments adopted by the UN and the Council of Europe. It also adopted international agreements abolishing the death penalty and according to the information available, it does not carry out the death penalty for any crimes. It ratified international agreements regarding refugees and stateless persons (Geneva Convention, New York Protocol, Protocol Relating to the Status of Stateless Persons). The EU accession negotiations with Montenegro started in June 2012 while EU representatives emphasized the improvement of Montenegro in the area of rule of law and fundamental rights.
	Slovenia	Yes	1. Slovenia does not consider any of mentioned countries to be safe country of origin. 2. Slovenia does not currently assessing the concept of "safe third country origin" should be applicable to any of them.
	Sweden	Yes	Sweden is not at this point in time using the concept of safe countries of origin.
	Norway	Yes	1. No, Norway does not have a list of safe countries of origin or safe third countries. However we have the Dublin procedure and an accelerated procedure, dealing with an application within 48 hours, for some countries. In this procedure, all applicants are dealt with on an individual basis and have the same rights as other asylum applicants: they are registered with the police authorities, they have an informative talk with an NGO for refugees (NOAS), a brief interview with UDI, and the right to appeal the execution of the decision as well as the right to a lawyer. These countries are listed below. 2. We have developed a list of countries [1] for which the Directorate has sufficient information on the general security and human rights situation and from which the majority of applications have often been found to be manifestly unfounded. An asylum-seeker from one of these countries will initially have his or her application processed on its individual merits under the 48-hour procedure. Following an examination of the claim, those applications that are not found to be manifestly unfounded will be removed from the 48-hour procedure. The list of countries to which the 48-hour procedure applies is reviewed and updated on a regular basis.

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			<p>[1] As at September 2014, the list included the following countries: Albania, Argentina, Australia, Austria, Barbados, Belgium, Bosnia, Bulgaria, Canada, Chile, Costa Rica, Croatia, the Czech Republic, Denmark, Estonia, the Faeroes, the Falklands, Finland, France, FYROM, Georgia, Germany, Gibraltar, Greece, Greenland, Hungary, Iceland, Ireland, Israel, Italy, Japan, Kosovo Albanians from Kosovo, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, Monaco, Mongolia, Montenegro, the Netherlands, New Zealand, Poland, Portugal, Romania, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the UK, the Ukraine, the USA, the Vatican City State. Applications from nationals of Cyprus are also considered according to this procedure. 403, or 3.3% of all applications lodged in 2013 were dealt with under this 48 hour procedure.</p>
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