



**Ad-Hoc Query on Article 36 of the Directive 2013/32/EU**

**Requested by CY EMN NCP on the 23<sup>rd</sup> of June 2014**

**Compilation produced on the 24<sup>th</sup> of November 2014**

**Responses from [Austria](#), [Belgium](#), [Czech Republic](#), [Finland](#), [France](#), [Germany](#), [Hungary](#), [Latvia](#), [Lithuania](#), [Luxembourg](#), [Malta](#), [Netherlands](#), [Portugal](#), [Spain](#) (14 Member States)**

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**1. Background Information**

According to Article 36 of the DIRECTIVE 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)-

***The concept of safe country of origin***

1. A third country designated as a safe country of origin in accordance with this Directive 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,

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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. Member States shall lay down in national legislation further rules and modalities for the application of the safe country of origin concept.

We would appreciate your responses to the following queries regarding the implementation of Article 36:


- (a) How is Article 36(2) of DIRECTIVE 2013/32/EU implemented in your national legislation?
- (b) Could we have examples, of the further rules and modalities which you are implementing at a national level?

We would very much appreciate your responses **by July the 23<sup>rd</sup> 2014.**






**2. Responses**

		Wider Dissemination?	
	Austria	Yes	<p>In the current Austrian asylum legislation, the concept of a safe third country is implemented as follows:</p> <p>According to Art. 4 Asylum Act, an application for international protection shall be rejected as inadmissible, if the third-country national can find protection from persecution in a country with which agreements on determining responsibility for assessing asylum applications or the Dublin Regulation is not applicable (para 1). Protection in a safe third country is provided, if a third-country national has access to a procedure to obtain refugee status in a state in which there is no violation of <i>inter alia</i> Art. 2 and 3 ECHR or if this is provided through another third country, he or she has residence rights during the procedure in that state and protection from removal to the country of origin, if there is a threat of a violation of Art. 2 and 3 ECHR. This also applies for states in which a status decision has already been taken (para 2). The conditions of para 2 are fulfilled (rebuttable) if the state has ratified the Geneva Refugee Convention and has introduced in law an asylum procedure that implements the principles of the Convention, the ECHR and the protocols 6, 11 and 13 (para 3). Even if protection in a safe third country is provided, the application for international protection shall not be rejected as inadmissible if this would lead to a violation of Art. 8 ECHR (para 4). If a third-country national, whose application was rejected as inadmissible according to para 1 cannot be removed due to factual grounds no lying in his or behaviour within three months after the decision can be executed, the decision is suspended (para 5).</p> <p>Art. 12 Federal Office for Immigration and Asylum Act provides that, if an application is rejected as inadmissible (Art. 4 Asylum</p>





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			Act), the rejecting decision shall contain a confirmation that the application was not assessed in merits in Austria.
	<b>Belgium</b>	<b>Yes</b>	<p>1.The new article 57/6/1 of the Aliens Act of 1980 has introduced the notion of safe country of origin in the Belgian law. The royal decree implementing this article came into force on the 1st of June 2012 and the following seven countries were put on the list of safe countries of origin: Albania, Bosnia-Herzegovina, FYROM, Kosovo, Serbia, Montenegro and India. A Royal Decree of 24 April 2014 reconfirmed the list with the same seven safe countries of origin that was adopted for the first time in 2012.</p> <p>2. The new article 57/6/1 established an accelerated procedure similar to the procedure that was already in place for EU citizens. According to the article 57/6/1 of the Aliens Act countries can be considered safe 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. After having received a detailed advice of the Office of the Commissioner General for Refugees and Stateless Persons (CGRS), the government approves the list of safe countries of origin upon the proposal of the Secretary of State for Migration and Asylum and the Minister of Foreign Affairs. The list must be reviewed annually and can be adjusted. As a result, it is possible that, because of the situation in the countries on the list, some countries are removed from the list and other countries are added.</p> <p>The CGRS has to decide if asylum applications from nationals or stateless residents of these countries are to be taken into consideration or not within 15 working days. The accelerated procedure still guarantees an individual treatment of the application. As for all asylum applications the burden of proof is shared between the asylum applicant and the asylum authority. However asylum applicants from safe countries of origin have to contest the presumption of safety of their country of origin: it has to appear clearly from the asylum seeker's 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>Appeals at the Constitutional Court and at the Council of State challenging the legal concept of safe countries of origin, and the Royal Decree respectively, have both been rejected. However, following the Constitutional Court judgment of 16 January 2014 on the ineffectiveness of the non-suspensive annulment and suspension appeals against decisions concerning asylum applications from persons from safe countries of origin, changes in the law have been adopted. These changes entering into force on 1 June 2014, introduced a full judicial review procedures against inadmissibility decisions on subsequent applications and safe country of origin applications. Until June 2014 the annulment appeal filed with the Council for Alien Law Litigation did not have an automatic suspensive effect. Asylum applicants from safe countries of origin are entitled to reception for the entire duration of the asylum procedure (first instance and appeal stage).</p>



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	<b>Czech Republic</b>	Yes	Given the early stage of legislative process of implementation of the Directive, we cannot give you a conclusive answer to your query. I am sorry we cannot be of much help in this respect.
	<b>Finland</b>	Yes	Finland has not yet implemented Directive 2013/32/EU.
	<b>France</b>	Yes	<p>The notion of “safe country of origin” was introduced in France by the law of 10 December 2003. Asylum seekers who are nationals of countries considered as “safe countries of origin” are not granted temporary permission to stay under asylum. Their application is examined by the French Office for the Protection of Refugees and Stateless Persons (OFPRA) under the fast-track procedure and possible appeal to the National Court of Asylum has no suspensive effect.</p> <p>However, changes are foreseen with the draft national law on asylum which is under development. Asylum applications from nationals of safe countries of origin will be examined individually by the OFPRA under fast-track or ordinary procedure if that is justified in view of their individual situation. Furthermore, asylum seekers from safe countries of origin will be personally interviewed and possible appeal to the National Court of Asylum will have suspensive effect. The draft national law on asylum also refers to the Annex I of the directive 2013/32/EU on the designation of safe countries of origin. New provisions aiming at ensuring compliance with the requirement of relevance and implementing a mechanism of deletion from the list of safe countries of origin are also provided.</p>
	<b>Germany</b>	Yes	<p>Article 36, section 2, of the Directive 2013/32/EU indicates that there is no need for Germany to amend the already existing national rules and modalities for the application of the concept of safe country of origin. The transposition according to article 31 paragraph 3 of the guideline 2005/85/EG has already taken place.</p> <p>There shall be the statutory assumption that a threat of persecution in the countries that have been classified as safe countries of origin does not prevail. During a personal interview the applicant has to present the facts and give sound reasons for his/her fear of persecution or existence of the danger of imminent harm to him/her. The applicant can refute the assumption of a persecution free existence by making it plausible that in his/her case the persecution does in fact exist. If he/she is not successful, the application for asylum has to be rejected as manifestly unfounded according to § 29a, section 1, AsylVfG (=German Asylum Procedure Law). In accordance with § 36, section 1, AsylVfG, a period of one week for departure is given. The appeal shall not provide a suspensive effect (§ 75, section 1, AsylVfG). Legal action and an emergency appeal can be filed within a week. During the emergency appeal procedure the administrative court decides whether the applicant may remain in Germany until the completion of the proceedings. If the administrative court rejects the application, any further stay in the territory shall no longer be permitted .</p>
	<b>Hungary</b>	Yes	Hungary has not transposed the Directive yet. Currently, the transposition process is only in the preparatory phase.


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	<b>Latvia</b>	<b>Yes</b>	<p>1. The Asylum Law includes the definition of the safe country of origin but till now the further rules and modalities for the application of the safe country of origin concept had not been implemented in the national legislation. Taking into consideration common caseload and countries where asylum seekers came from any asylum application has been examined individually without the application of the safe country of origin concept.</p> <p>2. Please, see the previous answer.</p>
	<b>Lithuania</b>	<b>Yes</b>	The draft law which will transpose the Directive is under preparation by respective authorities at the moment, so we are not in the position yet to provide the answer to these questions.
	<b>Luxembourg</b>	<b>Yes</b>	<p>1. At the moment Directive 2013/32/EU of 26 June 2013 has not been transposed.</p> <p>2. In Luxembourg, article 21 (2) of the amended Law of 5 May 2006 (Asylum Law) defines what is considered as a safe country of origin. It is very similar to the definition established in article 36 (1) (a) and (b) of the Directive 2013/32/EU. Article 21 (4) of the Asylum Law establishes that a grand-ducal regulation may consider a country as safe country of origin if it is established that there is generally and consistently no persecution as defined in the Geneva Convention. The following criteria will be considered for the designation of a country as a safe country of origin:</p> <ul style="list-style-type: none"> <li>a) the observation of rights and freedoms enshrined in the European Convention on Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the UN Convention against torture and other cruel, inhuman or degrading treatment;</li> <li>b) the principle of non-refoulement under the Geneva Convention;</li> <li>c) providing an effective remedy system against violations of these rights and freedoms.</li> </ul> <p>In accordance to this legal disposition the government issued a <a href="#">grand-ducal regulation of 21 December 2007 establishing a list of safe countries of origin</a> which was amended twice by <a href="#">grand-ducal regulation of 1 April 2011</a> and by <a href="#">grand-ducal regulation of 19 June 2013</a>.</p>
	<b>Malta</b>	<b>Yes</b>	<p>(a) The Office of the Refugee Commissioner notes that no major changes were made in national legislation with regards to the transposition of Article 36(2) of the recast 2013 APD, since this article already existed in the 2011 APD (Article 31(3)).</p> <p>(b) The Office of the Refugee Commissioner notes that the term 'safe country of origin' is defined in Article 1 of the Refugees Act (Chapter 420 of the Laws of Malta) as amended in 2014. The application of a person who comes from a safe country of</p>

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			<p>origin can be manifestly unfounded according to this Act.</p> <p>Article 24(1)(g) of the Act states that the application of a person in Malta who is a national or citizen of any safe country of origin listed in the Schedule (attached with this Act) or, if he is not a national or citizen thereof, he has the right of residence therein, shall be inadmissible.</p> <p>Article 24(3) states that the (Refugee) Commissioner shall allow applicants to present their views, with regards to the application, of the ground referred to in this article before a decision on the admissibility of an application has been taken. A personal interview on the admissibility of the application shall also be conducted.</p> <p>Article 24(4) states that the Minister may by regulations amend the list of countries (safe countries of origin) specified in the Schedule.</p> <p>A list of safe countries of origin is annexed to the Act.</p>
	<b>Netherlands</b>	<b>Yes</b>	<p>(a) How is Article 36(2) of DIRECTIVE 2013/32/EU implemented in your national legislation?</p> <p>For the implementation of Directive 2013/32/EU, the Netherlands is still examining further rules and modalities for the application of the safe country of origin concept.</p> <p>However, in the Netherlands, at present, we already use the safe country of origin concept on a case-by-case basis (not by adopting lists of safe countries). If an applicant originates from a country which is party of the Geneva Convention and the ECHR or comparable treaty, the (Aliens Act Implementation) guidelines are as follows. The Immigration and Naturalisation Service (INS) and the applicant have a shared burden of proof regarding the question if the applicant's country of origin complies with its treaty obligations (Geneva Convention, ECHR) towards the applicant:</p> <ul style="list-style-type: none"> <li>- the applicant has to substantiate that the country of origin does not comply with its treaty obligations.</li> <li>- the INS examines if the country of origin <u>practically</u> complies with its treaty obligations.</li> </ul> <p>(b) Could we have examples, of the further rules and modalities which you are implementing at a national level?</p> <p>See above.</p>
	<b>Portugal</b>	<b>Yes</b>	Portugal has not yet implemented/established rules or guide lines for the application of the safe country of origin concept.

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	<b>Spain</b>	<b>Yes</b>	Spain does not have safe country of origin list. Furthermore, the concept of safe country of origin it is not applied.
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