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4.3.2 Safe country of origin and safe third country concept



Within EU law and as defined in the recast Qualification Directive, a safe country of origin is considered to be a place where the law is applied democratically, and political circumstances do not generally and consistently lead to persecution, torture, inhuman or degrading treatment or punishment, or threat by reason of indiscriminate violence in situations of international or internal armed conflict. The assessment of a country as a safe country of origin considers aspects such as: relevant laws and regulations of the country and the manner in which they are applied; observance of human rights, in particular non-derogable ones; respect for the *non-refoulement* principle; and provision for a system of effective remedies against violations of rights and freedoms. When a third country is regarded as a safe country of origin, it is usually included in a national list and presumed to be safe for applicants originating from that country, unless evidence to the contrary is provided. The procedure to designate a country as safe is guided by the recast Asylum Procedures Directive.

Developments which took place in 2020 focused on periodically reviewing the list of safe countries of origin. In Austria, the new coalition government announced in its programme for 2020-2024 a comprehensive strategy on migration, including an ongoing review of the list of safe countries of origin.[394] Similarly, in Estonia, the amendment of the AGIPA in June 2020 provides that the Police and Border Guard Board (PBGB) updates the list of safe countries of origin at least once a year.[395]

In Sweden, the government submitted a legislative proposal to parliament in December 2020 to introduce a list of safe countries of origin which would be created by the Swedish Migration Agency. The Swedish parliament adopted the government's proposal to incorporate the rules on safe countries of origin in the Aliens Act, and according to the new rules, the Swedish Migration Agency may consider an application to be manifestly unfounded if the applicant comes from a country included in the list. The driver of this change is a 2018 CJEU judgment in which the court found that Swedish law did not include any provisions on countries of origin, yet the Swedish Migration Agency had rejected an asylum application as manifestly unfounded considering Serbia as a safe country. More recently, the Swedish Migration Agency proposed eight safe countries of origin: Albania, Bosnia and Herzegovina, Chile, Kosovo, Mongolia, Northern Macedonia, Serbia and the United States of America. The new amendments and the list of safe countries of origin were foreseen to enter into force on 1 May 2021.[396]

Legislative changes concerning safe countries of origin also took place in Italy, where the

Legislative Decree No 130 provides that the 9-day procedure is applied to applicants from safe countries of origin.[397] In addition, the Italian Court of Cassation pronounced an important judgment on 14 October 2020 on the retroactivity of the decree establishing a safe country of origin list while appeal procedures are ongoing. Applicants coming from safe countries who lodged an appeal before the entry into force of the decree which established the list of safe countries of origin do not need to prove the danger of the particular country.

While some countries did not make any changes to their list of safe countries of origin in the course of 2020, others introduced changes which are outlined in *Table 4.3.1*. In addition to the changes to the lists of safe countries of origin, Belgium modified its list of safe countries of origin to include the correct name of the Republic of North Macedonia.[398]
In the Netherlands, the State Secretary for Justice and Security announced that, although Algeria, Brazil and Morocco remain on the list of safe countries of origin, there are profiles to which special attention should be granted. For Algeria, exceptions include persons who criticised the authorities or who do not follow Sunni Islam. For Brazil, attention should be given to LGBTI applicants and journalists who report on corruption and crime or who criticise the government; while for Morocco, exceptions include Hirak Rif activists and journalists who reported on the situation in the Rif mountains and the demonstrations that took place there.[399]

Table 4.3.1 Changes to national lists of safe countries of origin

Country	Safe countries added (date)	Countries no longer considered safe (date)
Austria	UK and Northern Ireland (1 January 2021)[400]	
Cyprus	Albania, Montenegro, Serbia, North Macedonia, Bosnia Herzegovina, Georgia, India, Bangladesh, Pakistan, Sri Lanka, Vietnam, Philippines, Nepal, Morocco, Algeria, Tunisia, Senegal, Gambia, Egypt, Nigeria (8 May 2020)[401]	
France		Benin (29 September 2020)[402]
Greece	Bangladesh and Pakistan (29 January 2021)[403]	
Malta	Algeria, Bangladesh, Egypt, Morocco, and Tunisia (May 2020)[404]	
Netherlands	Armenia (March 2020)[405]	India temporarily suspended awaiting new assessment, Togo (30 September 2020)[406]

Legislative changes took place in Bulgaria and Ireland. The Law on Asylum and Refugees in Bulgaria was amended to refine the definition of the ‘safe third country’ concept and additional legal guarantees were added when applying this concept. The authorities must examine whether there is a link between the applicant and the safe third country by carrying out an individual security check. Applications where the safe third country concept is applicable are dismissed as

manifestly unfounded, provided the applicant would be admitted to the respective country.[407] Civil society organisations raised the issue that the applicant could not have a real possibility to dispute the existence of a connection through a clearly-defined and transparent procedure.[408]

In Ireland, with the withdrawal of the UK from the EU, the International Protection Act 2015, Section 21(2) was amended so that an application lodged by a person arriving from a safe third country will be dismissed as inadmissible. The International Protection Act 2015 now also includes a new Section 72A that the Minister for Justice may designate safe third countries, and the UK was added to this list.[409]

The Grand Board of the UNE decided in October 2020 that the Norwegian Directorate of Immigration (UDI) can only refuse to examine the merits of an application for protection from someone who has been in a safe third country before coming to Norway if the applicant had legal access to the respective country (for example, through a valid residence permit or visa).[410] Before this decision, the Norwegian Organisation for Asylum Seekers (NOAS) noted that the Norwegian Immigration Act, Section 32(1d) fell short of the requirements of the recast Asylum Procedures Directive (not binding in Norway), in particular Article 38(1e). That section was initially introduced as a response to an influx of asylum applicants from Russia but was subsequently applied to nationals of Brazil, Ukraine, United Arab Emirates and EU Member States, including Greece, Hungary, Italy, Malta and Romania.

UNHCR noted that guidance on Libyan nationals and habitual residents, which was published in September 2018, remained valid. Thus, UNHCR did not consider that Libya meets the criteria for being designated as a safe third country for the purpose of disembarkation following rescues at sea.[411]

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[397] Legge 18 dicembre 2020, n. 173 Conversione in legge, con modificazioni, del decreto-legge 21 ottobre 2020, n. 130, recante disposizioni urgenti in materia di immigrazione, protezione internazionale e complementare, modifiche agli articoli 131-bis, 391-bis, 391-ter e 588 del codice penale, nonche' misure in materia di divieto di accesso agli esercizi pubblici ed ai locali di pubblico trattenimento, di contrasto all'utilizzo distorto del web e di disciplina del Garante nazionale dei diritti delle persone private della liberta' personale. (20G00195) [Law No 173 of 18 December 2020, Conversion into law, with amendments, of Decree-Law No 130 of 21 October 2020 laying down urgent provisions on immigration, international protection and supplementary protection, amendments to Articles 131-bis, 391-bis, 391-ter and 588 of the Criminal Code, as well as measures concerning the prohibition of access to public establishments and premises of public detention, combating the misuse of the web and regulating the rights of persons deprived of personal freedom. (20G00195)], December 18, 2020. https://www.gazzettaufficiale.it/eli/id/2020/12/19/20G00195/sg

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[399] Ministry of Justice and Security | Ministerie van Justitie en Veiligheid. (2020, September 30). *Kamerbrief over herbeoordeling veilige landen van herkomst tranche 2 tot en met 5 [Parliamentary brief on the reassessment of safe countries of origin, divisions 2 to 5]* . https://www.rijksoverheid.nl/documenten/kamerstukken/2020/09/30/tk-herbeoordeling-veilige-landen-van-herkomst-tranche-2-tot-en-met-5

[400] 145. Bundesgesetz, mit dem das Niederlassungs- und Aufenthaltsgesetz, das Asylgesetz 2005 und das BFA-Verfahrensgesetz geändert

werden [145. Federal Act amending the Establishment and Residence Act, the Asylum Act 2005 and the BFA Procedural Act], December 23, 2020. https://www.ris.bka.gv.at/Dokumente/BgblAuth/BGBLA_2020_I_145/BGBLA_2020_I_145.html

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[402] For a 12 month period. Décision du 29 septembre 2020 suspendant la République du Bénin de la liste des pays d'origine sûrs, INTV2026434S [Decision of 29 September 2020 suspending the Republic of Benin from the list of safe countries of origin, INTV2026434S], September 29, 2020. https://www.ofpra.gouv.fr/sites/default/files/atoms/files/decision_du_29.09.2020.pdf

[403]??????? ????? ????????? ??????? ?????. 778/2021 ??? 317/?/29-01-2021 ????????? ??????? ????????? ????? ????????? ??? ???????????????? ?? ????????, ??????? ?? ??? ???. 5 ??? ?????? 87 ??? ?. 4636/2019 (?? 169) [Joint Ministerial Decision No 778/2021 Government Gazette 317/?/29-01-2021 [Establishment of a National List of countries of origin classified as safe, in accordance with para. Article 87 of Law 4636/2019 (A' 169)]. http://www.et.gr/idocs-nph/search/pdfViewerForm.html?args=5C7QrtC22wEzH9d6xfVpRXdtvSoClrL8tISkIWZakDp5MXD0LzQTLf7MGgcO23N88knBzLCmTXKaO6fpVZ6Lx3Unk td6SIudsHLy112WOFwwf3iUberKgZ5As0n4iStqzrIB96u2lZ

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