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**Directorate-General Alien
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reference number in your
reply. Please refer to only one
case in your letter.*

Date 3 November 2015
Subject Application of the concept of safe countries

Context

In my letter of 17 August 2015, about the increased influx of asylum seekers in Europe, I informed you about the Council conclusions of the JHA Council of 20 July 2015. In this it was remarked that there are strong indications that particularly countries of the Western Balkans can be considered as safe countries of origin, and in this context Member States were recommended to primarily assess these countries as a matter of priority. Because the Netherlands also has to deal with an increased influx of asylum seekers from countries of the Western Balkans, I indicated at that time that the Netherlands has the intention of observing these recommendations very soon.

As I had announced during the debate of 14 October on the European Summit of 15 October 2015, I decided to institute a national list in anticipation of establishing the draft Regulation with a list of safe European countries of origin. This deems that the countries of the Western Balkans are safe countries of origin.

The Procedures Directive and the draft text of the abovementioned Regulation allows Member States to maintain a supplemental national list in addition to the European list. Countries stated on the European list may not also be stated on the national list. At the establishment of the European list the 'duplicates' would therefore have to be deleted from the national list.

I will submit the national list of safe countries of origin in conformity with the requirement of the Procedures Directive and Article 3.105ba of the Aliens Decree 2000, in a list that will be added as an Annex to the Aliens Regulations. In conformity with the requirement in the Procedures Directive I will inform the Commission on which countries the principle of safe countries of origin will be applied.

I have explained these measures below in more detail.

European context

In Article 37 of the Procedures Directive it is stated that for the treatment of asylum applications Member States may set down in legislation that certain countries are to be deemed as safe countries of origin. For assessment whether a country in its generality can be deemed to be 'safe', in conformity with Annex I of

the Procedures Directive, account must be kept of legislation and other regulations of the particular country involved and the manner in which it is applied, compliance with human rights laws, compliance with the principle of non-refoulement, and making available a system of actual remedy at law against breaches of the aforementioned rights and freedoms.

The assessment whether a country is a safe country of origin must be based on a range of information sources, especially including information from different Member States, the EASO, the UNHCR, the Council of Europe and other relevant international organisations, and the Member States must regularly investigate the situation in these safe countries of origin.

Finally, the Member States must inform the Commission which countries are deemed to be safe countries of origin.

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Procedural consequences

This means that for an asylum seeker originating from a safe country of origin there is a presumption that in his/her country of origin there is no well-founded fear for persecution and that he/she likewise does not run an actual risk of 'serious harm' as meant in Article 15 of the Qualification Directive and Section 29 (1) (b) of the Aliens Act. In other words, the basic assumption is that the request is not eligible for a decision to grant an application. The applicant can put forward substantial reasons why the country is not safe in his/her specific case. This means that a heavier burden of proof rests with the third-country national to make it plausible that he/she is eligible for international protection.

If the conclusion is that the applicant originates from a safe country of origin, the application can be rejected as manifestly unfounded. A consequence to this is that the filing of an appeal against the rejection has no suspensive effect and that, in principle, the rejected asylum seeker may therefore not await the outcome of his/her appeal in the Netherlands. An obligation can also be imposed on him/her to immediately leave the Netherlands. Furthermore, in certain cases a decision can be made on the application in border procedures.

Composition of the national list

The countries in the Western Balkans that I consider should be deemed to be safe countries of origin are Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Montenegro and Serbia. In essence the reasoning for marking these countries as safe:

- a. Except for Kosovo, all the countries have ratified the Geneva Convention on Refugees and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). Here the Commission indicates that by virtue of its controversial status as an independent state, Kosovo is not in a position to do so. Though Kosovo has adopted eight treaties concerning guarantees in respect of human rights in Section 22 of the Constitution.
- b. Inhabitants of these countries are exempt from the visa requirement for the European Union. In the case of Kosovo a relaxed regime applies as regards the visa requirement.
- c. Albania, Macedonia, Montenegro and Serbia are formally candidate countries for the EU. Bosnia and Herzegovina and Kosovo are designated as potential candidate countries for the EU. Every year the Commission assesses the progress made in these countries, including in respect of the human rights situation and protection of minorities.

- d. Other Member States which include Belgium, Denmark, Luxembourg, Austria and the United Kingdom, as well as Norway and Switzerland have also indicated these countries as a safe country of origin.

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To this end, I have noticed that in the past few years the courts of law in respect of Bosnia, Macedonia, Montenegro and Serbia have already considered that, on the basis of arguments a) to c) and the fact that there are no official reports from which it appears that these countries violate human rights, an overall legal presumption exists that there is no legal foundation for granting international protection. For Albania and Kosovo such case law is not yet available.

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In addition, I have decided to also designate other countries in Europe, Oceania and America, of which it is generally known that the abovementioned basic human rights are upheld. By this I mean the EEA countries (Liechtenstein, Norway, Iceland), Andorra, Monaco, San Marino, Vatican City, Switzerland, Australia, Canada, Japan, the United States of America and New Zealand.

As you know, the Commission has also placed Turkey on the proposal for a European list of safe countries of origin. During the general discussions on 7 October recently about the JHA Council of 8 and 9 October, I indicated that the cabinet in itself could agree to this. Nonetheless, for the time being I have decided not to place Turkey on the national list.

My substantiation for this is that when taking the various ongoing developments into consideration, I don't consider placing Turkey on the list at this point in time as opportune. On the one hand there's the broader immigration discussions between the EU and Turkey, and on the other hand the discussions within the EU about the composition of the European list. In view of this I think it's sensible not to anticipate the developments.

The preceding shall not affect the fact that in individual cases Turkey can be designated as a safe *third* country.

The list of safe countries is not static. If relevant developments occur in one of the countries of origin that are designated as safe, naturally it will be taken into consideration to delete this particular country from the list. Furthermore, in the coming time it will also be assessed whether there is cause to add other countries to the list.

Secretary of State for Security and Justice,

K.H.D.M. Dijkhoff