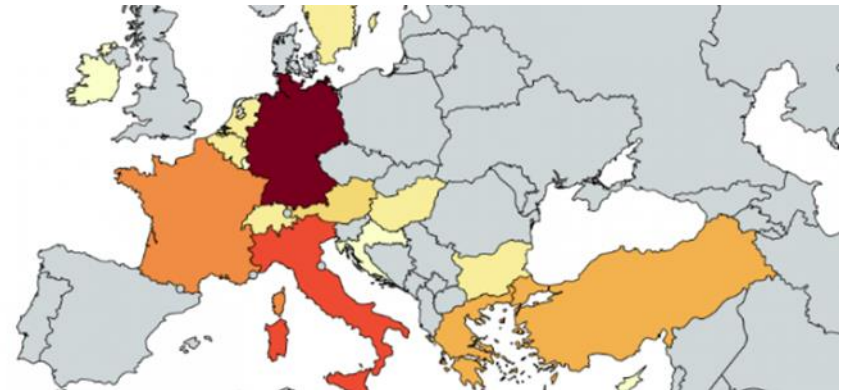


AEAJ Working Group Athens 2017

The Concept of Safe Countries of Origin and Safe Third Countries

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High Influx of Refugees in Europe since 2015



	CoO	Asylum applicants	Positive decisions 1st instance	Total decisions 1st instance	Recognition Rate
1	FYROM	10,330	70	8,185	0.9%
2	Serbia	30,840	400	22,070	1.8%
3	Montenegro	1,845	40	1,355	3.0%
4	Bosnia and Herz.	10,705	330	7,210	4.6%
5	India	3,505	80	1,690	4.7%
6	Georgia	8,560	335	6,135	5.5%
7	Haiti	2,005	105	1,730	6.1%
8	Kosovo	37,895	830	13,145	6.3%
9	Algeria	6,700	215	2,930	7.3%
10	Albania	16,825	1,040	13,350	7.8%
11	Mongolia	2,015	85	965	8.8%
12	Bangladesh	11,680	755	7,355	10.3%
13	Armenia	5,700	440	3,890	11.3%
14	Morocco	4,255	210	1,805	11.6%
15	Tunisia	2,340	170	1,440	11.8%
16	Vietnam	1,410	100	690	14.5%

Art. 37 APD: Safe Countries of Origin

1. Member States may retain or introduce legislation that allows, in accordance with Annex I, for the national designation of safe countries of origin for the purposes of examining applications for international protection.
3. The assessment of whether a country is a safe country of origin in accordance with this Article shall be based on a range of sources of information, including in particular information from other Member States, EASO, UNHCR, the Council of Europe and other relevant international organisations.

Art. 36 APD: Safe Countries of Origin

A country may be considered as a safe country of origin for a particular applicant only if the applicant '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'.

That means the **burden of proof shifts** to the applicant.

Consequences of SCO

- 1) Burden of proof shifts to the Applicant (Art. 36 APD)
- 2) The application can be examined in an accelerated procedure or in transit zones at the border (Art. 31(8)(b) APD)
- 3) Member States may consider such an application as manifestly unfounded (Art. 32(2) APD)

1.3. The current situation as regards current national SCO list

	Prioritisation of applications	Accelerated examination procedure	Border procedure	Admissibility procedure	Different procedural rules for subsequent applications	Safe country of origin	Safe third country	Explicit withdrawal	Implicit withdrawal
AT	●	●	●	●	●	●	●		
BE	●	●		●	●	●		●	●
BG	●	●			●	○	○	●	●
CY	●	○		●	●	○	○	●	●
CZ	●	●	●	●	●	●	●	●	●
DE	●		●	●	●	●	●	●	●
EE	●	●	●		●	●	●	●	●
EL	●	●	●	●	●	○	○	●	●
ES	●	●	●	●	●			●	●
FI	●	●		●	●	●	●	●	●
FR	●	●	●		●	●			

HU	●	●	●		●	●	●	●	●
IE	●	○	●	●	●	●	○	●	●
IT	●				●			●	●
LT	●	●	●	●	●	○	○	●	●
LU	●	●		●	●	●	●	●	●
LV	●	●		●	●	●	○	●	●
MT	●	●			●	●		●	●
NL	●	●			●	●	●	●	●
PL	●	●		●	●			●	●
PT		●	●	●	●	○	○	●	●
RO	●	●	●		●	○	○	●	●
SE	●	●		●	●			●	●
SI	●	●		●	●	○	○	●	●
SK		●	●		●	●	○	●	●
UK		●		●	●	●	●	●	●

Criteria for designating a country as a safe country of origin

APD recast criteria (Annex I)	Stable democratic political system governed by law	BE, CZ, DE, FI, FR, IE, RO, SK
	Ratification and compliance with international treaties on human rights and fundamental freedoms	BE, CZ, DE, FI, FR, IE, LU, RO, SK
	Absence of persecution	AT, BE, CY, DE, FI, HU, LU, SK, UK
	Absence of serious violations of human rights (torture or inhuman or degrading treatment or punishment)	BE, CY, DE, FI, HU
	Availability of effective legal remedies against violations of human rights	AT, BE, BG, DE, HU, LU, RO
	Absence of threat by reason of indiscriminate violence	BE, CY, DE, HU
	Compliance with the principle of <i>non-refoulement</i>	BE, DE, LU

EU+ country	Safe Countries of Origin
Austria	EU Member States EEA countries/Switzerland Australia Canada New Zealand Albania Bosnia and Herzegovina Kosovo* FYROM Montenegro Serbia
Belgium	Albania Bosnia and Herzegovina FYROM Kosovo* Serbia Montenegro India

France	Albania Bosnia and Herzegovina FYROM Montenegro Serbia Armenia Georgia Moldova India Mongolia Benin Cape Verde Ghana Mauritius Senegal Tanzania
Germany	EU Member States Bosnia and Herzegovina FYROM Serbia Ghana Senegal

UK	Albania Bosnia and Herzegovina
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	FYROM Kosovo* Montenegro Serbia Moldova Ukraine India Mongolia South Korea Bolivia Brazil Ecuador Peru Gambia (only for male applicants) Ghana (only for male applicants) Kenya (only for male applicants) Liberia (only for male applicants) Malawi (only for male applicants) Mali (only for male applicants) Mauritius Nigeria (only for male applicants) South Africa Sierra Leone (only for male applicants)
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*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the

Legal Form of SCO Designation

Germany: Parliamentary Act approved by both Chambers of Parliament (intensive discussion based on various COI – see Judgment High Admin Court Baden-Württemberg 2015 on Serbia). Every two years the Government shall submit to the Parliament a report explaining whether or not the requirements for the classification of the states listed as safe countries of origin continue to be met.

France: The decision is taken by the Board of the French Asylum Agency (OFPRA) and subject to control by the Conseil d'Etat (see Judgment of 30 December 2016).

UK: The Secretary of States certifies countries as SCO. There is no appeal against this designation.

Legal Form of SCO Designation

Austria: some countries by Act, some by Ministerial Order

Belgium: Royal Decree (= Government)

Czech R: Decree of Ministry of Interior

Germany: Act of Parliament

Ireland: Ministerial Order

Netherlands: Order of Secretary of State

Norway: Circular from the Immigration Directorate

Slovenia: Government Order

Switzerland: Government Order

UK: Ministerial Order

Court Control of SCO

The answers to the Questionnaire show that all our Courts exercise effective control. They compare the enlistment of countries as safe with fresh Court COI and look at the individual risk profile of the asylum seeker.

Germany: Serbian nationals of Roma ethnicity (2015) -

Belgium: Serbian national of Albanian ethnicity (2016) -

NL: Two Lesbian Women in Albania (2016) -

Slovak R.: Lesbian Woman in Kenya (2014) +

Slovenia: Political Activist in Morocco (2016) +

Safe Third Country (STC)

Is Turkey safe?



Art. 38 APD: Safe Third Countries

Principle of subsidiarity of protection if an applicant was already safe in another country or has strong connections to another country

Three Conditions:

(1) Has already got protection in another country and can return there (Art. 35 APD) or there is a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country (Art. 38(2)(a)).

Art. 38 APD: Safe Third Countries

2) Treatment of persons seeking intern. protection in accordance with the following principles (Art. 38(1)):

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion;

(b) there is no risk of serious harm as defined in Directive 2011/95/EU;

(c) the principle of non-refoulement in accordance with the Geneva Convention is respected;

Art. 38 APD: Safe Third Countries

(d) 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

(e) the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention.

Art. 38 APD: Safe Third Countries

Third Condition (Art. 38(2)(c)):

(3) There must be rules for an examination of whether the particular applicant is safe. He must have the right to challenge the application of the safe third country concept on the grounds that the third country is not safe in his or her particular circumstances. The applicant shall also be allowed to challenge the existence of a connection between him and the third country.

Consequence of STC

Art. 33(2)(c):

Member States may consider an application for international protection as inadmissible

Denial and Delay

The Impact of the Immigration Law's "Terrorism Bars" on Asylum Seekers and Refugees in the United States



November 2009

Third Countries declared as safe

Norway	AT, DE, UK
Switzerland	AT, DE, HU, (UK)
Montenegro	CZ
Moldova	CZ
Serbia	HU
Kosovo	HU
Egypt	NL
Kenya	NL
Kuwait	NL
Tunisia	NL

...

Court Control of STC

The answers to the Questionnaire show that Courts of countries that use STC concept exercise effective control – in most cases. They compare the enlistment of countries as safe with fresh Court COI and look at the individual risk profile of the asylum seeker (f.ex. NL). If they have no list of countries they assess the situation in the specific country by themselves (f.ex. Greece for Turkey related to the specific situation of the individual Syrian asylum seeker in Turkey, Sweden related to the specific situation of a Syrian asylum seeker of Armenian ethnicity)

CJEU Judgments

Judgment ,HID‘ of 31.1.2013 – C-175/11 paras 72-75:

(72) the EU legislature introduced the concept of ‘safe country of origin’ according to which, when a third country may be regarded as safe, Member States should be able to designate it as safe and presume that a particular applicant will be safe there. The EU legislature therefore provided that Member States may decide that an examination procedure be prioritised or accelerated in the case where the asylum application is considered unfounded because the applicant is from a safe country of origin within the terms of that directive.

CJEU Judgments

(73) ...the nationality of the applicant for asylum is an element which may be taken into consideration to justify the prioritised or accelerated processing of an asylum application.

(74) ... in order to avoid any discrimination between applicants for asylum from a specific third country...that prioritised procedure must not deprive applicants in the first category of the guarantees required by Article 23 of Directive 2005/85.

CJEU Judgments

(75) In particular, the (applicants) must enjoy a sufficient period of time within which to gather and present the necessary material in support of their application, thus allowing the determining authority to carry out a fair and comprehensive examination of those applications and to ensure that the applicants are not exposed to any dangers in their country of origin.

CJEU Judgments

Judgment ,Mirza‘ of 17.3.2016 – C-695/15 para 53

The right to send an applicant for international protection to a safe third country may also be exercised after a Member State has accepted that it is responsible according to Article 3(3) of the Dublin III Regulation, pursuant to that regulation and within the context of the take-back procedure. (Czech R. had sent Pakistani applicant back to Hungary acc to Dublin R. and Hungary wants to send him back to Serbia as STC where he was before – This is in accordance with EU Law)

ECtHR Judgment 2017

Judgment of 14.3.2017 – No 47287/15 ,Ilias and Ahmed vs Hungary‘

The two applicants are Bangladeshi nationals. They were arrested by Hungary while crossing the Serbian-Hungarian border. Their asylum appeals and appeals against rejection to Serbia were without success. After a month they were expelled to Serbia which Hungary has listed as safe third country and in fact left Hungary. Their complaint to the ECtHR was successful because Hungary had exposed them to a risk of chain-refoulement to Greece (in October 2015 unacceptable acc Art. 3 ECHR – so ECtHR).

ECtHR Judgment 2017

The ECtHR criticises that Hungary had not assessed information on the risk of chain-refoulement properly, but only relied on the government's designation of Serbia as STC. This enlistment had come suddenly in August 2015 and had been rejected before. The change of view on Serbia was not explained by new facts and was in contrast to reports of UNHCR and NGO's. They relied on a schematic reference to the Governments STC-list. Sent from Serbia to Macedonia they had low recognition chances there. Returned to Greece the accomodation conditions in 2015 violated Art. 3 ECHR.

Thank you for your Attention

