

NATIONAL
STAKEHOLDER
REPORT

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ASYLUM

The role and limits of the Safe third country
concept in EU Asylum policy





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The **National stakeholder reports** aim at taking the academic debate provided by the ReSOMA discussion briefs to the national level throughout the EU. For each topic, a **structured feedback process** has been implemented in a number of Member States where the issue at hand is most relevant in terms of current developments and upcoming trends. Leading experts discussed the **possible consequences of evolving (or lacking) EU policies for the Member State**, and the **country's role in shaping the EU agenda**. These feedback loops enabled researchers, practitioners and policy-makers to exchange experiences and strategies to face issues related to migration, asylum and integration matters.

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National stakeholder report

The role and limits of the Safe third country concept in EU Asylum policy*

'Safe third countries'

The definition of 'safe third countries' is often regarded as one of the most controversial topics within the 2016 reform of the Common European Asylum System (CEAS). The term 'safe third countries' is usually applied to situations where an asylum applicant could have found protection in a third state, for instance when a migrant has passed through a safe third country or when there is a specific bi- or multilateral agreement with a safe third country. This concept is closely related to the notion of 'first country of asylum', which refers more narrowly and formally to the first country where an application for asylum was made.

While the driving motivation is to determine the eligibility of an asylum applicant for protection, it more and more becomes a ground for "barring applicants from a full examination of the merits of their claim (...), which covers refugees who have already obtained and can again avail themselves of protection in a third country" (ReSOMA Synthetic State of the Art Report, 2018). One of the proposals, which was explored in the earlier [ReSOMA Ask the Expert Policy Brief on Asylum](#), is to come with a full harmonization of a European list of safe third countries, replacing the current practice in several countries with national safe third country lists.

The objective of this stakeholder outreach report is to collect feedback from national and subnational stakeholders regarding the state of the debate in various EU countries on safe third countries and specifically the perception that stakeholders have of European plans regarding full harmonization.

Stakeholder outreach and feedback

This report reaches out to stakeholders from a variety of countries where the issue of safe third countries have been a clear concern. It provides an overview and analysis of the feedback provided by these stakeholders regarding what has been stated in earlier reports from [ReSOMA](#) concerning safe third countries and asylum. This involves the following countries:

- Austria
- Hungary
- Italy
- Germany
- Greece
- The Netherlands

In each of these countries, between 6 and 10 stakeholders were consulted (see appendix for a full but anonymized overview). This includes policy actors working at the national as well as the local level, as well as NGOs working in the social field and experts from the various national



contexts with specific topic of the consultation. In many cases, the consultation took the form of an individual interview (via Skype or Gotomeeting); in several cases where this was seen as appropriate, the consultation took a form of a virtual meeting with several stakeholders at the same time, allowing for interaction on specific topics. The consultations followed a standardized template and were implemented by experts with access to networks in the selected countries. For this report, this involved the European University Institute (Austria, Italy, Germany and Greece), UPF-Barcelona (The Netherlands), and the Institute for Minority Studies of the HAS Centre for Social Sciences (Hungary). Based on reports of the stakeholder consultations, this stakeholder outreach report was compiled by the ReSOMA team of Erasmus University Rotterdam.

The consultations focused on two topics that emerged as central from the [Ask the Expert policy briefs](#) and the synthetic state of the art report on safe third countries;

- *Relevancy of 'safe third countries' across country settings.* How relevant is the topic of safe third countries on the policy agenda in various countries? What are the main proposals/initiatives for the criteria for "safe third country" and "first country of asylum"? Are there different views on it?
- *Perspectives on EU harmonization plans;* The European Commission's 2016 Asylum Regulation proposal aims to move towards full harmonization in this area, by replacing national safe country lists with EU lists within five years of entry into force of the proposed

Regulation. What are stakeholders' views on these plans? What would be the implications of this for the asylum seekers in various countries and their asylum system in general?

Relevancy of 'safe third countries' across country settings

There is significant cross-national variation as well as variation within countries concerning stakeholders' views of the relevancy of safe third countries. Especially in Greece, Hungary, the Netherlands and Germany the debate on safe third countries is generally perceived as relevant and very urgent. Stakeholders perceive it as a way of 'externalizing' what is perceived as a 'migration crisis' from these national settings, or as a Hungarian NGO puts it, avoiding to take responsibility in face of the migration crisis.

In Italy and to some extent Austria, stakeholders expressed that safe third countries was less an issue in national debates. Austria does include a list of safe third countries in its Asylum Act, but the application needs to be assessed on an individual basis. In the Italian public debate, the notion of safe third countries was not pinpointed as a particularly central issue. According to an Italian NGO, one of the reasons for this is the fact that most of the migrants that arrive in Italy have not passed through any 'safe third country' along their way (especially those arriving from West Africa or the horn of Africa): "There is no such thing as a safe third country along the African Route".

Across various country settings, stakeholders raised concerns about the application of safe third countries as a general



concept (or a general national or EU list) to individual cases. Whether a country is safe would, according to many stakeholders, need to be addressed more on a case-by-case basis, with full consideration of individual circumstances of asylum seekers. From the Dutch case, an example was raised of a heterosexual Bangladeshi man living in Egypt safely, whereas a LGBT Bangladeshi may not find a 'safe third country' in Egypt.

Many stakeholders refer to the political nature of the debate on safe third countries. This applies to stakeholders in Germany, as well as to Greece and Hungary. In Hungary, for instance the decision to define Serbia as a safe third country, was seen as a political decision. This political nature can lead also to paradoxical situations, for instance in Austria where 'safe third countries' also ended up on a list with travel warnings for Austrians; "What is disturbing about that that Austrian Ministry of Foreign Affairs made a "travel warning" list and then forces other people to go back to those countries, treating human lives differently" (Austrian NGO). Stakeholders felt that the debate on safe third countries was generally driven by political considerations for externalising migration pressure, rather than a true concern for human rights.

"What is disturbing about that that Austrian Ministry of Foreign Affairs made a "travel warning" list and then forces other people to go back to those countries, treating human lives differently" (Austrian NGO).

Also, stakeholders argue that in the definition of safe third countries, the work and experiences of NGO's, International Organisations and researchers operating in

those countries should be taken more into consideration. Formal government communications but also experiences of individual asylum applicants that have been repatriated, do not warrant the definition of a safe third country for all asylum applicants to be repatriated. Here once again the tension between a generic declaration of being a safe third country and the individual realities of this declaration play out.

Finally, attention was devoted by stakeholders to the EU-Turkey Deal which implicitly denotes Turkey as a safe third country. Here too, NGOs (especially those in Greece) argue that more research is required on a case-by-case basis as for whether Turkey is indeed a safe country for individual cases.

Perspectives on EU harmonization plans

Stakeholders are rather sceptical regarding EU plans for full harmonization of a list of safe third countries. In particular, they are sceptical about:

- *Implementation:* stakeholders doubt whether an EU harmonized list of safe third countries can be effectively implemented. Such implementation requires more than a legal structure; it requires a structure that can also monitor and enforce implementation in practice.
- *Political capacity:* especially given the political pressure within member states to externalize migration, it is seen as unlikely that member states would accept a structure that would indeed be able to enforce full harmonization. According to a Hungarian expert, there is



so much disagreement in the EU that it is an illusion to think about a harmonized list on safe third countries.

- *Non-refoulement*: stakeholders are sceptical from a human rights perspective, whether the EU would not make itself complacent to violation of the non-refoulement principle, when an asylum seeker is sent to a safe third country that is safe in general but turns out not to be safe in the individual case concerned.

Furthermore, if the EU was to pursue full harmonization, stakeholders point at a number of conditions for making the safe third countries strategy as success:

- *Guaranteeing a minimum floor of protection in safe third countries*; stakeholders argue that if the EU is to pursue harmonization, it should focus on warranting that in order to qualify as a safe third country, a minimum standard of human rights protection (in law and in practice) can be objectively identified.
- *Research on human rights protection*; for identifying this minimum floor of protection, the EU should make use of more input than formal government documentation; in particular the research and experiences of NGOs, International Organisations (such as OECD) and researchers should be used more.
- *Balancing a general list of safe third countries with individual cases*; even if a general list of safe third countries can be made and can be harmonized, then still stakeholders argue that a check is required whether a country is also safe in an individual case.

- *Mainstreaming safe third countries in EU's external policies*; harmonization of safe third countries should go together with a coordinated effort by the EU to invest in third countries so that they can meet criteria for being a safe third country. As such, working on a list of safe third countries may be a starting point for building a new relationship between the EU and countries in its environment.

"We do not think it is right to have a general opinion on a country, every evaluation should be individualised." (Greek NGO)

Conclusion

The outreach to stakeholders from a range of European countries on the definition of 'safe third countries' brings rather critical feedback on the current plans. The EU is planning to come with a full harmonization of a list of safe third countries. This seems to reflect the (strongly politicized) debates on asylum migration in specific countries; amongst the countries covered in this report, especially Germany, the Netherlands, Hungary and Greece. This seems connected to broader debate in these countries to externalize migration pressure.

However, stakeholders are rather sceptical when it comes to a harmonized list of safe third countries in particular and about the notion of safe third countries more in general. They argue that it is almost impossible to objectively define what goes as a safe third country, and to warrant that such a country is then also safe in all individual cases. They fear that



the EU would risk becoming complacent to refoulement in individual cases. Also, stakeholders are sceptical that the EU has the political capacity to get member states to agree to a common list, and if so, they are sceptical whether the EU will be able to come up with an administrative structure that ensures that such a list is enforced not only in law but also in practice.

Three key observations can be drawn from the feedback provided by stakeholders that are relevant for future policies:

- A clear recommendation from stakeholders is for the EU to define a minimum floor of human rights protection for countries in order to qualify as safe third country.
- This should involve investments in those countries in order to support safe third countries, as well as good research on the conditions in those countries, based not only on government communication but also on the work and experience of NGOs, IOs and researchers.
- Finally, stakeholders believe that the EU should always balance between a general list and individual cases; in all individual cases a check should be made whether a country is indeed safe for a specific person.



Appendix I: Consulted stakeholders

Country	City	Institution
Austria	Wien	Asylkoordination österreich
Austria	Wien	Austrian Red Cross
Austria	Wien	Flüchtlinge Willkommen
Austria	Wien	IOM Austria/EMN
Austria	Wien	IOM Austria/EMN
Austria	Wien	Jesuit Refugee Service
Austria	Wien	University of Wien
Austria	Wien	University of Wien
Austria	Graz	Refugee Law Clinics of University of Graz
Germany	Hannover	Lower Saxony Refugee Council
Germany	Berlin	Office of a member of Parliament
Germany	Berlin	Jesuit Refugee Service Germany (JRS)
Germany	Berlin	German Diakonie
Germany	Kiel	Medibüro
Germany	Gütersloh	Bertelsmann Stiftung
Germany	Berlin	University of Berlin
Greece	Athens	Solidarity Now
Greece	Athens	Norwegian Refugee Council
Greece	Athens	Ministry of Migration Policy
Greece	Athens	Danish Refugee Council
Greece	Athens, Thessaloni- niki	Diotima Centre for Research on Women Issues
Greece	Athens	Babel Day Centre for Migrants' Mental Health
Greece	Thessaloniki	Association for the Social Support of Youth (ARSIS)
Greece	Athens	Greek Council for Refugees
Hungary	Budapest	IOM Hungary
Hungary	Budapest	National Police Headquarters
Hungary	Budapest	Menedék Association
Hungary	Budapest	Menedék Association
Hungary	Budapest	Prime Minister's Office
Hungary	Budapest	Hungarian Helsinki Committee
Hungary	Budapest	UNHCR Regional Representation
Hungary	Budapest	Metropolitan Municipality of Budapest
Hungary	Budapest	Central Statistical Office
Italy	Rome	Civico Zero
Italy	Rome	IOM Italy
Italy	Rome	Caritas
Italy	Palermo	Centro Astalli
Italy	Bergamo	CESVI
Italy	Rome	"Victims of Torture Programs"- Médecins Sans Frontières
Italy	Milan	NAGA
Italy	Udine	SIMM
Italy	Rome	UNAR and Università la Sapienza
Netherlands	Amsterdam	Ministry of Justice
Netherlands	Amsterdam	Stichtinglos
Netherlands	Rotterdam	Municipality
Netherlands	Rotterdam	NGO
Netherlands	Utrecht	Municipality



ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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