



Safe countries of origin

An international comparison of the application of the 'safe countries of origin' concept in asylum policy

Summary

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Published by the RAND Corporation, Santa Monica, Calif., and Cambridge, UK

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Summary

Asylum procedures are accelerated in many European countries for asylum seekers coming from so-called 'safe countries of origin'. Asylum seekers from 'safe countries of origin' are presumed not to be in need of protection because they come from a country where there is generally no well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion within the meaning of the 1951 Refugee Convention, where no one shall be subjected to torture or inhuman or degrading treatment or punishment within the meaning of Article 3 of the European Convention on Human Rights nor do they have to fear serious harm which may relate to the death penalty or execution, torture or inhuman or degrading treatment or punishment, or serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict within the meaning of Article 15 of the EU Qualification Directive.

Designating third countries as 'safe countries of origin' allows European countries to declare asylum applications 'manifestly unfounded' if they are submitted by asylum seekers from such countries. Asylum seekers from safe countries of origin are assumed to have a low probability of being granted asylum from the start of the asylum procedure as there is no reasonable doubt about their application being unfounded. Nonetheless, as stipulated in the Asylum Procedures Directive (APD), the asylum applicant must always be given the opportunity to rebut the presumption of safety. The APD sets out the standards to execute accelerated asylum procedures. In determining whether a situation of uncertainty prevails in the country of origin of an applicant, Member States should ensure that they obtain precise and up-to-date information from relevant sources such as the European Union Asylum Agency, EUAA (previously named European Asylum Support Office [EASO]), Office of the United Nations High Commissioner for Refugees (UNHCR), the Council of Europe and other relevant international organisations. In addition, Member States must 'regularly' review the situation in third countries designated as safe countries of origin, to assess if the countries can still be considered safe in view of possible changes in the human rights situation.

Most European countries adopting safe country of origin policies do so on the basis of a list. These lists include third countries that the Member State has assessed and designated as safe countries of origin. Under the APD, Member States are currently responsible for the assessment and designation of safe countries of origin, despite initiatives to establish a European list of safe countries. Indeed, in 2015, the European Commission proposed a common EU safe country of origin list to facilitate the application of the safe country of origin concept, make asylum policy more effective and reduce discrepancies between lists. Due to a lack of agreement among Member States on such an EU list, the proposal was eventually withdrawn in 2019, though re-proposed by the Commission through a different route in 2023. Nevertheless, for the time

being it remains unclear if, and when, there will be a common European list of safe countries of origin. In 2015, the Netherlands provisionally decided to introduce a national list.

The number of European countries that have introduced safe countries of origin lists has increased in recent years. However, these lists often vary widely, including in terms of the length of the list, but also in terms of the specific countries designated as a safe country of origin. For example, some Member States have fewer than ten safe countries on their list, while others consider almost 30 third countries to be safe. To illustrate with an example, the Netherlands is the only European country to have designated Trinidad and Tobago as a safe country of origin. In general, little research has been done on the underlying reasons for these differences. Moreover, there is a general lack of understanding of European Member States' policies regarding the list of safe countries of origin, the (re)assessments of countries on the list and the justifications for safe country policy choices. Moreover, it is not always clear how such choices affect countries' asylum procedures.

This study was commissioned by the Research and Data Centre (WODC) and conducted by RAND Europe at the request of the Ministry of Justice and Security. The study stems from the wider desire of the Dutch government to map how and on what grounds other EU Member States use a list of safe countries of origin in their asylum policies.

Research questions and design

This study aims to provide insight into the application of safe country of origin policies in a selection of EU Member States. The research questions are:

Table S-1: Research questions 1

1	How do other Member States select countries for assessment?
2	Based on what sources and criteria do other Member States carry out the initial assessment, and what does the procedure look like?
3	Are the assessments and reassessments publicly accessible?
4	Based on what sources and criteria do other Member States carry out the reassessment and how often do these take place?
5	Are any groups and/or geographic areas excluded from the safe country of origin designation? If so, based on what criteria and is there a limit to the number of excluded groups for a country to still qualify as a safe country of origin?
6	What does the asylum procedure look like for applicants coming from a safe country of origin?
7	Do different conditions apply to reception and return procedures for asylum seekers from safe countries, and how does the return compare to that of other rejected asylum seekers?
8	Is relevant case law available, does the policy hold up in court and are there any vulnerabilities?
9	What are the differences in other Member States' safe country of origin policies compared to the Netherlands?

This study was divided into an exploratory phase and an in-depth phase. The exploratory phase aimed to provide an initial insight into the Dutch approach to their safe country list, as well as the approach of other Member States that use such a list. To this end, targeted desk research was used to identify the most relevant sources. In addition, criteria were designed for the selection of case study countries, including a variation in the geographical location of the countries and a variation in the length of the safe country lists. Based on the criteria and in agreement with the steering committee, the following countries were selected: Austria, France, Germany Italy and Sweden.

Through the in-depth phase, we aimed to gain an overview of how policies related to safe countries of origin are shaped in the selected case study countries, with a focus on answering the research questions. This phase consisted of additional desk research, taking into account both academic and grey literature, case law research and semi-structured interviews with experts and stakeholders from these countries as well as the Netherlands. The interviewed experts were identified through desk research and exploratory interviews with NGO representatives.

Findings

In the 1990s, the Netherlands was one of the first countries to introduce the concept of safe countries of origin into their asylum law, alongside for instance Germany and Austria. However, the Dutch list of safe countries of origin in its current form dates from 2015. Currently, the Netherlands has included 19 countries on its list. Of the researched countries, only Austria has more countries on its list (26). The lists of Germany (8), France (13), Italy (16) and Sweden (8) are all shorter than the Dutch list. The lists' contents also vary. For example, the Netherlands has several countries on its list that do not appear on any of the other lists, namely Brazil, Jamaica, Trinidad and Tobago and the United States. Germany has no countries on its list that the Netherlands does not have. Instead, France, Italy and Sweden have designated two countries (Cape Verde and Moldova), three countries (Algeria, Cape Verde and Côte d'Ivoire) and one country (Chile), respectively, as safe countries that are not included on the Dutch list. Ukraine has been taken off the list by Austria and Italy due to the war - in the Netherlands, Ukraine is provisionally suspended as a safe country of origin.

In the Netherlands, Austria, France, Germany and Italy, the introduction of the safe country of origin list stemmed from the desire to process asylum applications with a low approval probability faster. These applications are presumed to be manifestly unfounded because the asylum seeker is from a safe country of origin. Often this involves countries from which there are relatively high numbers of asylum applications, but with a low acceptance rate. In Sweden, the rationale for introducing the list was the same, but the immediate reason for introducing the list came from the Court of Justice of the European Union (ECJ), which ruled that Sweden could not continue to declare applications manifestly unfounded without incorporating the concept of 'safe country of origin' into Swedish national asylum law.

The study of safe country of origin policies in Austria, France, Germany Italy and Sweden found that, besides the number of countries on the list, several elements of the design of safe country policies differ from Dutch policies. We discuss these findings according to the research questions. Because the explanation of the differences between these countries and the Netherlands (research question 9) follows from answering

the research questions 1 to 8, question 9 is not dealt with separately, but is taken into account when answering the other research questions.

How do other Member States select countries for a first assessment?

In the Netherlands, the State Secretary of Justice and Security is responsible for selecting (and assessing) safe countries of origin. In Austria, the interior ministry proposes countries, which are then examined by the asylum agency's *Staatendokumentation* unit. In the remaining case study countries, it is not as clear who is responsible for the selection. Indeed, despite our literature review and expert consultation, the exact process and responsibilities of actors remained unclear. It is nonetheless clear that in Germany, multiple agencies are involved in the process. Additions to or removals from the list are usually suggested by the Federal Government and the Ministry of Interior. Consulted experts in Germany stated that political will appears to be an important condition for being able to designate a country as a safe country of origin. Similarly, in Italy, several actors are involved in the process. The responsibility for the selection of countries for a first assessment appears to be with the Ministry of Foreign Affairs, the National Asylum Commission and the Ministry of the Interior. By contrast, in Sweden and France this responsibility does not lie with ministries but respectively with the Swedish migration agency *Migrationsverket* and the Board of Directors of the French Office for the Protection of Refugees and Stateless Persons (OFPRA). Although the Board of OFPRA is responsible for selecting and assessing countries, decisions can be reviewed by the Council of State when they are appealed. In Sweden, the legal department of the migration agency *Migrationsverket* is primarily responsible for the decision to select countries for an assessment, although the agency's Director General ultimately decides.

Based on what sources and criteria do other Member States carry out the initial assessment, and what does the procedure look like?

The criteria against which third countries are assessed to be designated a 'safe country of origin' stem from the APD, which was subsequently transposed into national legislation, and are therefore largely the same in all case study countries. Austria is the only country that explicitly states to consider whether the death penalty was abolished and the corruption levels of a country in addition to the criteria listed in the APD. In all studied countries, it remains unclear how the criteria are balanced against each other.

The same applies to sources. Article 37 of the APD requires that during assessments of potentially safe countries of origin, Member States obtain precise and up-to-date information from relevant sources such as the EUAA, UNHCR, the Council of Europe and other relevant international organisations. There is no indication that the listed sources are not consulted in the case study countries. However, the experts interviewed in the Netherlands and the case study countries noted that the sources required by the APD are not always available, nor do they always contain the right information to carry out a full assessment. For this reason, additional sources are used, including, for example, *Freedom House* and *US State Department* reports in the Netherlands. This is also the case for the case study countries, which rely on both the sources of information as described in the APD, as well as additional information. However, for none of the countries did we discover how the sources used are weighted in the assessment. Only in Germany did an expert indicate that internal reports seem to weigh heavily in the (re)assessment procedure.

External stakeholders or experts are rarely consulted for or during (re)assessment processes. Only in Germany, stakeholders are given one day to comment on parliamentary consultations. In practice, this timeframe is often considered insufficient. An earlier EUAA publication suggested that NGOs in Austria are also allowed to occasionally comment on the Austrian list, but the NGO representatives we interviewed did not appear to be familiar with such an approach. Several interviewed experts from the Netherlands, Austria and Sweden nevertheless stated that they would welcome the opportunity to be able to comment on decisions and share their insights.

Are the assessments and reassessments publicly available?

The decisions and justifications for (re)assessments in the Netherlands and Germany are public and available online in the form of parliamentary letters (the Netherlands) or reports (Germany). In Sweden, decisions and explanations are also made public in country reports. In Italy, country reports containing justifications for the designation of countries as safe countries of origin are not consistently publicly accessible, but recently were made public for the first time following a request by the Association for Legal Studies on Immigration (ASGI). In contrast, the rationale for designating a country as a safe country of origin in France is not publicly available. In Austria, only the assessments from 2018 and 2019 are published on the website of the Austrian asylum agency. According to the Establishment Act of the Federal Office for Immigration and Asylum, the remaining documentation can only be accessed by the authorities.

Based on what sources and criteria do other Member States carry out the reassessment and how often do these take place?

There are no clear differences between the criteria and sources used in the initial assessment and reassessment in the case study countries. In the Netherlands on the other hand, there was a difference until the ruling by the Administrative Law Division of the Council of State (*Afdeling Bestuursrechtspraak, Raad van State*) on 7 April 2021 (ECLI:NL:RVS:2021:738), hereafter 'the Division'. Before this ruling, only information from the US State Department and the NGO Freedom House was used in the Dutch reassessments, and only when this rapid reassessment showed a significant deterioration, a comprehensive reassessment based on more sources was initiated. However, the Division's ruling stipulated that any reassessment should (where possible) use all sources under Article 37(3) of the APD. If this is not possible, there should be an elaboration on the reasons why.

According to the APD, third countries designated as safe countries of origin must be reassessed 'regularly', although this term is often interpreted differently. In the Netherlands, a ruling from the Division established that reassessments need to take place every two years. In Germany, countries are also reassessed every two years, although it is unclear why this two-year period was chosen. In Sweden, the countries on the list are reassessed every year, and interviewees further indicated that the countries on the list are constantly monitored in case any changes occur. The latter is also the case in the Netherlands. In Austria, reassessments also take place once a year. In France and Italy, no systematic reassessment procedure appears to take place. In the case of Italy, it is also not clear how and by whom the decision to start a reassessment procedure is taken. In France, reassessments are mainly initiated when the OFPRA board decides to do so or when representatives of the parliament or interested civil society organisations request the board to do so.

Are any groups and/or geographic areas excluded from the safe country of origin designation? If so, based on what criteria and is there a limit to the number of excluded groups for a country to still qualify as a safe country of origin?

Several European countries apply exceptions within the designation of safe countries of origin, including Denmark, Estonia, Hungary, Luxembourg, Czechia and Switzerland. Of the countries examined in this study, the Netherlands is the only country that has applied formal exceptions in its safe country of origin policy. In fact, the number of exceptions the Netherlands applies is relatively high. Indeed, of the 19 countries on the Dutch list, exceptions are applied to 13 countries (both geographical as well as specific groups of people). In practice, however, one of the case study countries also applies exceptions. Although Italy does not mention any exceptions in the officially published version of the list, the documentation recently released showed that certain countries on the list are not considered safe for all people. For Nigeria, for instance, nine exceptions are found in these documents. For both Italy and the Netherlands, it has remained unclear by what criteria exceptions are weighted and whether there is a limit to the number of exceptions that can be designated within a country.

Moreover, the APD is also interpreted differently in terms the application of exceptions. In 2017, the Administrative Law Division of the Dutch Council of State ruled in its decision of 1 February 2017 (ECLI:NL:RBDHA:2016:9971) that the APD does not expressly allow exceptions, but neither does it prohibit them. In Germany, however, the Federal Court ruled back in 1996 that applying exceptions would undermine the safe country of origin concept. France still used gender-based exceptions until 2015, but has since stopped doing so because an amended definition of the concept of 'safe country of origin' no longer allowed it. The migration agency *Migrationsverket* in Sweden reportedly interprets the APD as not allowing the exclusion of groups or geographical areas.

What does the asylum procedure look like for persons coming from a safe country of origin?

All case study countries apply an accelerated procedure for asylum seekers from safe countries, but the timeframe set for these procedures varies. The longest accelerated procedure is found in Sweden, which takes three months. In Austria, one of the two accelerated procedures should theoretically take place within just 72 hours. In the Netherlands and Germany, the accelerated procedure (in the Netherlands called the 'simplified procedure') takes a week, and in France a decision must be made within 15 days.

The accelerated asylum procedure also differs in other ways for persons from safe countries of origin compared to those following the regular asylum procedure. In the Netherlands, only one asylum interview (instead of two) is conducted in the accelerated procedure. Furthermore, there is no medical examination nor so-called 'rest and preparation time' before an interview. In France, Germany and Italy, according to the experts interviewed, the difference between the accelerated and regular procedure is found mainly in the burden of proof, which is higher for asylum seekers from safe countries of origin due to the presumption of safety. In Sweden, the same number of asylum interviews are conducted in the accelerated and regular procedures, but the interviews are reportedly shorter and less in-depth than in the regular procedure.

In the Netherlands, Germany and Italy, the timeframe in which asylum seekers in the accelerated procedure can appeal a decision is shorter than for asylum seekers in the regular procedure. This is not the case in

Austria, France and Sweden. In all case study countries, an appeal has no suspensive effect, meaning that asylum seekers coming from a safe country of origin can already be deported during the appeal procedure. In practice, however, a separate request for suspension can be made, and this usually seems to be granted.

In France, Germany and Italy, it appears that accelerated procedures are often not completed within the envisioned timeframe. As a result of delays, asylum requests are being transferred from the accelerated to the regular asylum procedure in France and Germany. Delays are also seen in the Netherlands, but these reportedly occur in the period between registration of the asylum seeker and the interview.

Do different conditions apply to reception and return procedures for asylum seekers from safe countries, and how does the return compare to that of other rejected asylum seekers?

Unlike in the Netherlands, asylum seekers from safe countries are not placed in so-called 'sober' housing during the asylum procedure in the case study countries. The Netherlands also conducted a pilot to house asylum seekers in sober locations during the appeal phase, but this has ended. Asylum seekers from safe countries of origin are now dispersed during the appeal phase and accommodated in different reception centres (if a preliminary injunction is granted). According to German law, asylum seekers from safe countries of origin do have to stay in specially designed reception centres during their asylum procedure and until a negative decision is made. In practice however, asylum seekers are housed in regular reception centres. Austria, France and Italy do not currently have separate reception centres for this group of asylum seekers, although in France it may occur that asylum seekers are placed in emergency accommodation if the asylum request is expected to be placed in an accelerated procedure. In Sweden, the type of reception depends on the region rather than the asylum procedure in question.

In addition, the Netherlands, Austria and France face capacity challenges regarding the organisation of housing for asylum seekers (including those from safe countries of origin). In the Netherlands, the 2021 sober reception pilot was discontinued because suitable accommodation could not be found. In Austria, capacity problems made it difficult for asylum seekers in accelerated procedures to move on from federal centres to local reception centres as planned. In France, many asylum seekers are no longer accommodated at all due to a severe lack of capacity.

Return procedures were perceived as difficult by the stakeholders interviewed in almost all countries, especially in terms of cooperation with third countries. All studied countries have both forced and voluntary departure procedures. Return assistance is also offered in the Netherlands, France, Germany and Sweden, and in some cases reintegration assistance is available for voluntary returns. However, such assistance is often only available for asylum seekers from certain countries of origin, and rarely for asylum seekers from countries designated as safe countries of origin. Only in France reintegration assistance appears to be available for rejected asylum seekers from Armenia, Georgia, India, Kosovo and Mauritius (countries on the safe country list). Return assistance is also offered in Italy, but our research did not reveal whether this also applies to asylum seekers from safe countries of origin. Reintegration assistance for rejected asylum seekers therefore currently appears to be offered only in France.

Is relevant case law available, does the policy hold up in court and are there any vulnerabilities?

In the Netherlands and Italy, safe country of origin policy does not always hold up in court. Indeed, in the Netherlands, court rulings have regularly led to changes in policy. An example is the ruling of 14 September 2016 (ECLI:NL:RVS:2016:2474), in which the Division ruled that the existence of laws prohibiting human rights violations is a prerequisite for designating a country as safe and that protection against such violations must also exist in practice. Furthermore, the previously mentioned ruling by the Division on 7 April 2021 (ECLI:NL:RVS:2021:738) for example also legally established the two-year reassessment period and ruled that the initial assessment may be the starting point for the reassessment. In Italy, the Civil Court of Naples in 2022 suspended a negative asylum decision from 2021 of a Ukrainian national and ruled that the situation in the country had changed after the war to such an extent that the asylum seeker could not be deported. In addition, courts have ruled in the past that a country designated as safe could not actually be considered safe for the asylum seeker in question. For example, the Bologna Court, after examining the most recent country information on Tunisia in 2021, found during an appeal hearing that, due to ongoing political unrest for the time being, the country could not be considered a safe country of origin not only for the asylum seeker in question, but also in a general sense.

Case law in Austria shows that in appeals against negative decisions filed by asylum seekers from safe countries of origin, the negative decisions usually hold up in court. Sweden only laid down its safe country policy in law following a ECJ ruling in 2018. Prior to the introduction of the list, the migration agency regularly declared asylum applications manifestly unfounded because information on the country of origin showed that the asylum seeker would receive acceptable protection in the country of origin. However, the ECJ ruled that such an approach was not acceptable without incorporating the concept into national law.

In Germany, we found only one case in the national case law database that concerned safe country of origin policies. The case concerned a Ghanian national who had received a negative asylum decision and a return decision. In the absence of refugee status or subsidiary protection, the court ruled that the return decision could legitimately be combined with the negative asylum decision. Asylum statistics show that it does happen that asylum seekers from safe countries of origin still receive some form of protection from the court. No relevant case-law could be identified on how France interprets the concept of safe countries and how judges rule on the safety of a country of origin.

Overall, it seems that the details on the assessment of countries under the safe country policy are more often determined by case law in the Netherlands than in the case study countries. In Italy, however, decisions are also sometimes reversed by the courts.

Reflection

Despite the APD harmonising some aspects of the Member States' safe countries of origin policies, for example regarding the use of sources, there are clear differences between the case study countries and the Netherlands. These may be subtle differences, but it should be noted that differences in, for example, the design of assessment processes and asylum procedures can lead to significant differences in the treatment of asylum seekers between Member States.

The results in this study suggest that the Netherlands has a more transparent policy on safe countries of origin than the case study countries. However, it is difficult to say to what extent this is the case in practice, and to what extent, for example, greater transparency in Dutch proceedings in general plays a role. What is clear is that the subject 'safe countries' is considered politically sensitive and that the concept's application is linked to the political climate of countries. These factors also complicate making comparisons: not only may information not have been shared with us (and moreover, in some cases, the information was not even known to the experts), countries' policies cannot be separated from the national migration and asylum situation. We did not analyse the political climate in different countries in this study, but discussions about asylum seekers from 'safe countries of origin' perhaps play a bigger role now than ever. Moreover, the migration and asylum policy field is constantly evolving. Such developments may have a major impact on (future) safe countries of origin policies in the Netherlands and other Member States.

In this study, we focused on answering the descriptive research questions on the nature of the safe country policy and its practical implementation in several European countries. The insights into the similarities and differences between these countries and the Netherlands may provide starting points for the Dutch government to further adjust the Dutch safe country policy.