The Concept of Safe Third Countries – Legislation and National Practices

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Content

The Author

Mysen Consulting is a one-person business for Charlotte Mysen, established for doing part-time research.

Charlotte Mysen has been working in the Norwegian Directorate of Immigration since 2000. She has been working with international question related to asylum and migration since 2006, especially the development of the Common European Asylum System and the European Asylum Support Office. She has previously conducted research on Normative European Jurisprudence in a Refugee and Migration context, the Dublin Regulation and the Qualification Directive.

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[1]The Participating States are Australia, Belgium, Canada, Denmark, Finland, Germany, Greece, Ireland, Netherlands, New Zealand, Norway, Spain, Sweden, Switzerland, United Kingdom and United States of America. Poland is currently observatory state.

Abstract

This paper will first give a short introduction to the development of the concept of safe third countries. The legal development within the EU will be the main interest, but the paper also has references to how Australia, Canada and the United States of America (U.S.) have regulated the concept in agreements. The paper will provide an overview of how IGC countries have implemented provisions on safe third countries and how they apply the concept in practice.

It is an underlying assumption that the concept of safe third country is currently being developed through legal, political and practical strands, and that the interaction between these three strands is relevant to future use of the concept. The project will look more closely at three countries (Norway, Greece and the Netherlands) that have practical experience of using the concept, and where these three strands are visible.

Based on these three focus countries, some lessons learned have been identified, as well as some criteria that are important in order for future implementation to succeed. These lessons and criteria can be drawn upon in future discussions of the Asylum Procedures Directive.

List of abbreviations

APD	Asylum Procedures Directive
AS	Greek Asylum Service
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
CoE	Council of Europe
EEA	European Economic Area
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
EUAA	European Union Agency for Asylum
EU MS	Member States of the European Union
IGC	Intergovernmental consultations on migration, asylum and refugees
IGC EEA MS	Member States of the IGC and the European Economic Area
IGC EU MS	Member States of the IGC and the European Union
IGC MS	Member States of the IGC
IND	Immigratie- en Naturalisatiedienst
NGO(s)	Non-governmental organisations
STCA	Safe Third Country Agreement between Canada and United States
UDI	Norwegian Directorate of Immigration
UNHCR	United Nations High Commissioner for Refugees

‘Safe third country – Country through which an applicant transits, which is considered as capable of offering him or her adequate protection against persecution or serious harm.’

European Parliament Research Service (EPRS), 2017

1. Introduction

The right to control the entry, residence and expulsion of non-nationals rests with the national state. However, through the development of international law, most states have entered into international commitments that give them certain obligations, including obligations to asylum seekers and refugees.

It can be difficult for states to reconcile these international obligations with their legitimate national interests, such as control of national borders and national measures to restrict immigration. Migration management is a much debated and politically sensitive issue, especially in times with a high influx of migrants and asylum seekers.

In 2017, there seems to be political will to reaffirm the commitment to international obligations towards people in need of protection, following up the 2016 New York Declaration for Refugees and Migrants (UN General Assembly, 2016). At the same time, there are calls, in many countries, for more restrictive national measures with respect to refugees and migrants.

The notion of safe third country has existed in parallel with the legal developments of the international human rights and protection obligations. The concept itself is not in general considered to be in breach of states’ international obligations (UNHCR, 1996; UNHCR, 1998), even if some scholars argue this (Moreno-Lax, 2015). Anyhow, the concept of safe third country is a measure that aims to restrict access to territory and asylum systems and, it can be argued, that allows states to disclaim responsibility. At the same time, the concept is designed to safeguard the most important human rights and protection obligations.

The concept is highly relevant and may have a potential for more extensive use in future migration management. Its potential to reconcile conflicting international

obligations and national interests is what makes the concept especially interesting to examine further.

This paper will first give a short introduction to the development of the concept of safe third countries. The legal development within the European Union (EU) will be the main interest, but the paper also has references to how Australia, Canada and the U.S. have regulated the concept in agreements. The paper will then provide an overview of how the IGC countries have implemented provisions on safe third countries and how they apply the concept in practice.

It is an underlying assumption that the concept of safe third country is currently being developed through legal, political and practical strands, and that the interaction between these three strands is relevant to future use of the concept. The project will look more closely at three countries (Norway, Greece and the Netherlands) that have practical experience of using the concept, and where these three strands are visible.

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2. Legal framework - the concept of a safe third country

The notions of safe third country and first country of asylum[2] can be found in national legislation in Europe as early as in the 1980s. At the same time, recommendations, resolutions and conclusions on the subject can be found in international forums such as the Council of Europe (CoE) (1997a), United Nation High Commissioner of Refugees (UNHCR) (1997; 1989) and the European Union (Council of the European Union, 1992a).

The reasoning behind national regulation and international awareness can said to be threefold:

- the need to avoid asylum seekers being sent successively from one State to another without any of these States considering their asylum claim

[2] A country where an applicant has been recognised as a refugee and can still receive protection.

- the need for rules allocating state responsibility
- the need to address the problem of refugees and asylum seekers unlawfully leaving countries where they have already been granted protection or have had a genuine opportunity to seek such protection

The underlining presumption is that an asylum seeker should apply for asylum in the first country in which he/she had an opportunity to do so.

While not contesting that the concept could be used for migration management purposes, UNHCR and ECRE have called for states to harmonise their national laws, and to implement common procedures and practices for application of the concept. These calls have been made in order to avoid refugees ending up 'in orbit' and to address the risk of refoulement (ECRE, 1995; UNHCR, 1996).

A legal provision allocating responsibility within the Schengen Member States can be found in the Schengen Agreement of 1990, a provision further elaborated in the Dublin Convention, signed in 1990.[3] Interestingly, the Dublin Convention, which determines which State is responsible for examining applications filed in one of the Member States, also has a provision stating that, 'Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State, in compliance with the provisions of the Geneva Convention, as amended by the New York Protocol, cf. Dublin Convention Article 3 (5).

The EU was granted competence to adopt legislative instruments in the fields of immigration, borders and asylum through the Treaty of Amsterdam (1997), but the objective of harmonising asylum policies was already defined by the Luxembourg European Council in June 1991 and clarified by the Maastricht European Council in December 1991.

In 1992, the Council of the European Union issued a resolution on a Harmonized Approach to Questions Concerning Host Third Countries (London Resolution), in which they agreed on some principles that should form the procedural basis for applying and defining the concept of host third country.[4] The resolution states that 'It must either be the case that the asylum applicant has already been granted

[3] Entered into force 1997.

[4] The term 'host third country' comprised both concept of 'first country of asylum' and 'safe third country'.

protection in the third country or has had an opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek their protection, before approaching the Member State in which he is applying for asylum, or that there is clear evidence of his admissibility to a third country. […] The asylum applicant must be afforded effective protection in the host third country against refoulement, within the meaning of the Geneva Convention' (Council of the European Union, 1992a).

At the time the resolution was passed, there was agreement among the Ministers that national laws should be adapted, and that the principles of this resolution would be incorporated at the latest by the time of the entry into force of the Dublin Convention.

In 1997, the Council of Europe (Committee of Ministers) formulated guidelines to the Member States on the 'Application of the Safe Third Country Concept'. Referring to the EU resolution from 1992 and relevant UNHCR Excom conclusions, the CoE concluded that there was a need to establish under which conditions a country could be considered safe for an asylum seeker. In addition to the principle that the third country will provide effective protection against refoulement, the guidelines require that the third country should provide the 'possibility to seek asylum and, where granted by the third country, to enjoy asylum'. The CoE also mentions relations with third countries, and readmissibility (Council of Europe, 1992a).

The Treaty of Amsterdam stated that, within a period of five years after the entry into force of the Treaty, the Council should adopt measures on asylum in the following areas: reception conditions, asylum procedures, qualification and allocation of responsibility. In 2000, the Commission presented the first draft of a Directive on common standards for procedures in European Union Member States (EU MS) for granting and withdrawing international protection, including provisions on safe third countries. The first generation of the APD entered into force in 2005.

In **Australia** the concept of safe third country has been interpreted by the courts and developed in law since 1997. Safe third country provisions are considered as part of the protection visa assessment process. Under Section 36(3) of the Migration Act 1958, if an applicant has a right to protection in any country other than Australia,

including another country of which they are a national, Australia will be taken not to have protection obligations in respect to them.

The current policy is that asylum seekers who try to travel illegally by boat to Australia after January 1, 2014, will not be processed or resettled in Australia. Boats may be intercepted at sea and returned to international or Indonesian waters or the people on board may be sent to a third country for processing (Library of Congress, 2017).

Canada and the **United States** have regulated the responsibility of asylum seekers crossing the Canada–U.S. land border in a Safe Third Country Agreement, which came into effect in 2004. To date, the U.S. is the only country that is designated as a safe third country by Canada under the Immigration and Refugee Protection Act.

Safe third country provisions in the United States require a bilateral or multilateral agreement. Currently, the U.S. only has an agreement in place with Canada.

While the U.S. currently sees a small number of cases where the safe third country concept can be applied, during 2017 there have been a large influx of asylum seekers to Canada putting severe pressure on the national system.

The Safe Third Country Agreement (STCA) applies only to refugee claimants who are seeking entry to Canada from the U.S.:

- at Canada-U.S. land border crossings,
- by train, or
- at airports, only if the person seeking refugee protection in Canada has been refused refugee status in the U.S. and is in transit through Canada after being deported from the U.S.

Canada experienced in 2017 that a significant number of asylum seekers have been trying to walk over an unguarded section of the Canada-U.S. border, in order not to fall inn under the STCA and be send back to the U.S according to the agreement. As of August, 27,440 claims for asylum have been filed in Canada. Out of this number 13,211 people have been intercepted for illegally crossing the border (Levitz, 2017).

The STCA has previously been contested by refugee advocacy groups, challenging the assumption that U.S. is a safe country. The New Democratic Party of Canada and refugee advocates have also recently called on the government to suspend the

Safe Third Country Agreement and review U.S. President Donald Trump's recent anti-immigration measures (Kassam, 2017).

In September 2017 Canadian government officials stated that they recently had reviewed the Trump administration's immigration policies and found that the United States is a safe country for refugees (Zilio, 2017).

2.1. The current Asylum Procedures Directive

According to Article 33 in the Asylum Procedures Directive, an EU MS may consider an application inadmissible if a country, which is not a Member State, is considered to be a safe third country for the applicant.

EU MS may adopt procedures for deciding on the admissibility at the border or transit zones of the EU MS, when an application is made at such locations, cf. Article 43.

The concept of safe third country is regulated in Article 38 (1).[5] Only where national authorities are **satisfied** that a person seeking international protection will be treated in accordance with five given principles, cf. Article 38 (1) (a-e), may they consider an application for international protection inadmissible, cf. Article 33. The five principles reflect international obligations pursuant to the ECHR and the 1951 Geneva Convention and say something about what level of protection a third country must provide for an applicant in order to be defined as safe.

[5] See Asylum Procedures Directive Article 38 (1)

Member States **may** apply the safe third country concept only where the competent authorities **are satisfied** that a person seeking international protection will be treated in accordance with the following principles in the third country concerned:

(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;

(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.

The application of the safe third country concept shall also be subject to rules laid down in national law regulating the link between the applicant and the third country, the methodology and procedural rights, cf. 38 (2) (a-c).[6]An EU MS shall inform an applicant of the decision and provide him/her with a document informing the third country that the application has not been examined in substance, cf. Article 38 (3)(b). In cases where a third country does not permit the applicant to enter its territory, the EU MS shall ensure access to a procedure, cf. Article 38 (4).[7] Article 38 also requires the EU MS to inform the Commission about which countries they apply the concept to, cf. Article 38 (5).

2.2. Implementation of the Asylum Procedures Directive

Previous studies and overviews of EU MS's implementation and practices regarding the Asylum Procedures Directive and the safe country provisions show that there have been, and still are, differences in how EU MS have implemented the Asylum Procedures Directive and the safe third country provisions (UNHCR, 2010a; ECRE, 2016a). The conclusion that the CEAS legal framework and the EU MS's implementation were still not working at their full potential, was also drawn after the migration crisis in 2015.

[6] See Asylum Procedures Directive Article 38 (2); The application of the safe third country concept shall be subject to rules laid down in the national law, including:

> (a) rules requiring 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;
>
> (b) rules on the methodology by which the competent authorities satisfy themselves that the safe third country concept may be applied to a particular country or to a particular applicant. Such methodology shall include case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe;
>
> (c) rules in accordance with international law, allowing an individual examination of whether the third country concerned is safe for a particular applicant which, as a minimum, shall permit the applicant 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 or her and the third country in accordance with point (a).

[7] See Asylum Procedures Directive Article 38 (4); Where the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.

The sections below will provide a short overview of how EU MS have implemented the concept of safe third country, as well as describing differences/similarities in how the other IGC MS have implemented the concept.

2.2.1. Legal implementation among IGC EU and EEA MS

As of 1 November 2017, most of the IGC EU MS have a provision in national law either implementing Article 38 of the Asylum Procedures Directive or reflecting the same content. The term 'safe third country' is either used directly in the statutory provision,[8] in official documents regulating the statutory provision[9] or on official webpages containing information about the provision.[10]

In Belgium amendments to the Aliens Act transposing the recast Asylum Procedures Directive was adopted on the 9 November 2017 (La Libre, 2017). Ireland is now the only IGC EU MS, that does not have a national safe third country provision. Ireland adopted amendments to its Aliens Act in 2015, including provisions on first country of asylum, but not on safe third countries. Denmark is not bound by the Asylum Procedures Directive, but it does have a national provision reflecting the content of the APD provision on safe third countries.

IGC EEA countries Switzerland and Norway also have national provisions reflecting the concept of safe third countries. The Swiss provision contains the term safe third countries. In Norway, the term 'safe third country' is not used in the law, but it is used in the Bill proposing amendments to the Immigration Act (Norwegian Ministry of Justice and Public Security, 2015b) and in the instructions issued by the Norwegian Ministry of Justice and Public Security on how to apply the amended statutory provision on the arrivals over the Norwegian/Russian border (Norwegian Ministry of Justice and Public Security, 2015c).

2.2.2. Legal implementation among IGC MS outside the EU

In Australia, the Migration Act contains a specific provision on 'Safe third countries'. The concept is also regulated in Canadian law with reference to 'designated countries'. The term 'safe third country' is used, however, in preparatory works and

[8] United Kingdom, The Netherlands, Spain, Finland, U.S.
[9] Canada, Norway, Sweden.
[10] Norway, Denmark.

public discourse. The Immigration and Nationality Act in the U.S. on the other hand do refer to 'safe third country'.

New Zealand does not have a safe third country provision in its refugee policy or law.

2.3. The actual wording of the national statutory provisions

Even though most IGC MS have national provisions, the actual wording of the provisions differs. Some countries, such as the Netherlands and Greece, have implemented Article 38 of the APD directly in national law, while other IGC MS use a wording that covers the same international obligations, even if they do not use the exact wording from the Directive. Germany has chosen to keep the original national provision (from before the APD), which has a very different wording from the Directive.

In this context, it is especially interesting to look more closely at two themes: the level of protection that should be provided in the third country, and the requirement that there should be a link or connection between the applicant and the third country.

2.3.1. Level of protection

Article 38 (1) of the APD states that a person must be treated in accordance with five principles if a state wants to apply the concept of safe third country. These five principles say something about the level of protection a third country must offer a person seeking protection, and they reflect MS's international obligations.[11]

All countries have national provisions reflecting the principle of non-refoulement and the prohibition on sending someone back to where he/she will run a real risk of ill-treatment. However, the majority of EU MS have not implemented Article 38 (1) (b), cf. Article 15 c of the Qualification Directive concerning 'serious harm',[12] a principle added during the revision of the APD in 2011.

The criterion in 38 (1) (e), set out the possibility to request refugee status and, if found to be a refugee, to be granted protection in accordance with the Geneva Convention. A definition of 'Geneva Convention' for the purpose of the APD is given in Article 2 (a) which states that ´Geneva Convention` means the Convention of 28

[11] Geneva Convention 1951 and Protocol 1967, European Convention on Human Rights 1950, International Covenant on Civil and Political Rights (ICCPR) 1966, Convention against Torture 1984.
[12] Finland, Belgium, Denmark and Greece has this provision in national law.

July 1951 Relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967.

The IGC MS that have implemented[13] this principle, have chosen different ways to implement it. Some MS have used the wording from the APD, while Finland has a reference to countries that, without geographical limitations, have signed and respect the 1951 Geneva Convention. Sweden refers to countries where the applicant 'has the opportunity to apply for protection as a refugee'. Denmark has a requirement in national law that return to a third country can only happen if the country has signed and actually respects the Refugee Convention of 28 July 1951 and where there is access to a proper asylum procedure. It does not have a reference to the 1967 Protocol, however.

Even if the wording of the APD has been implemented, there has been discussion about whether the third country must actually have ratified the 1951 Geneva Convention or if the assessment should be based on the actual protection offered. If a third country is required to have ratified the 1951 Geneva Convention, the next question is whether the country must also have ratified the 1967 Protocol.

Canada, the U.S. and Australia also regulate the possibility of requesting and receiving protection in accordance with the Geneva Convention in their national legislation. In Australian law, access to the asylum procedure is defined as ensuring the willingness of a country to allow a person, in relation to whon the country is prescribed as a safe third country, 'to remain in the country during the period in which any claim by the person for asylum is determined'.[14]

In the agreement between Canada and the U.S. from 2002, the states reaffirm 'their obligation to provide protection for refugees on their territory in accordance with these instruments'. Article 3 of the agreement states that '[i]n order to ensure that refugee status claimants have access to a refugee status determination system, the Parties shall not return or remove a refugee status claimant referred by either Party under the terms of Article 4 to another country until an adjudication of the person's refugee status claim has been made.'

[13]The criterion is not found in German and Irish law.
[14] See Migration Act 1958 Sect 91D (3)(c)(ii).

This criterion is not regulated in national legislation in Norway and Switzerland.

Legal interpretation

UNHCR has been of the opinion that the safe third country provision in the APD require ratification of the 1951 Geneva Convention and/or the 1967 Protocol, as well as implementation in practice (UNHCR, 2005a).[15]

The EU Commission's position since the EU-Turkey statement has been that 'Art. 38 of the Asylum Procedures Directive does not require ratification of the Geneva Convention without geographical limitations' (European Commission Director-General for Migration and Home Affairs, 2016). As regards Turkey, they have stated that 'the Turkish legal framework combined with the assurances that Turkey provided [...] still can be considered as sufficient protection or protection equivalent to that of the Geneva Convention' (European Commissioner for Migration and Home Affairs, 2016).

The criterion concerning the 1951 Geneva Convention has been interpreted by national courts in the Netherlands, Switzerland and, most recently, in Greece.

The current interpretation from the Dutch courts when it comes to level of protection is that the relevant issue is not whether a third country is a party to the Convention or not, but if the possibility exists to request refugee status and actually receive protection in accordance with the 1951 Geneva Convention (European Database of Asylum Law, 2016a).

The Swiss Asylum Appeals Commission has ruled that a person cannot find actual protection in a country that only applies the 1951 Convention to European refugees (ECRE, 2016a).

UNHCR stated in March 2016, in relation to the EU-Statement, that the appropriate course of action would be for a national court to submit a request for a preliminary ruling to the CJEU on the interpretation of this Article (UNHCR, 2016a). This has not been done so far. The Greek Council of State (by a majority of 13 to 12 judges) concluded in its judgment of 22 September 2017 that there was no reasonable doubt about the meaning of Article 38, and thus no reason to submit a request for a

preliminary ruling to the CJEU. In its judgment, the Council of State interpreted the criterion protection in accordance with the 1951 Geneva Convention as 'not requiring the third country to have ratified the Geneva Convention, and in fact without geographical limitation, or to have adopted a protection system which guarantees all the rights foreseen in that convention' (AIDA, 2017).

2.3.2. Link/connection

The Asylum Procedures Directive states that the MS must have rules requiring a connection between the applicant and the third country concerned based on which it would be **reasonable** for that person to go to that country. Preamble 44 to the Asylum Procedures Directive makes reference to a 'sufficient connection to a third country'.

This criterion is regulated very differently in national legislation. The Netherlands, Belgium and the United Kingdom have exemplified what would constitute sufficient connection in national law. In other countries, the criterion is not regulated in national law.

Norwegian law requires that an asylum seeker has 'stayed' in the third country, but does not contain more detailed clarification of the term, such as length of stay. It is stipulate in Norwegian law that the application for a residence permit shall nonetheless be examined on its merits if the foreign national has a connection with the realm that makes it most logical that Norway examines it.

Sweden assesses both the links the asylum seeker has to the safe third country and to Sweden.

Canada and the U.S. have exceptions to the agreement regarding the importance of family unity, the best interests of children and the public interest. The most common exception is for claimants with family in Canada (IGC, 2017b).

In Australia, it is regulated in the Migration Act 1958[16] that a person may have a prescribed connection with a country if the person is or was present in the country at a particular time or at any time during a particular period; or the person has a right to enter and reside in that country (however that right arose or is expressed).

[16] See Migration Act Section 91 D (2).

Looking at the provisions in national law regulating the criterion of sufficient connection, the conclusion is that there is wide variety. In the agreement between Canada and the U.S. transit will be the element determining responsibility. However, none of the other IGC MS have explicitly stated in national law that mere transit would be sufficient to establish a connection between the applicant and the third country.

Legal interpretation

In connection with the safe third country concept, UNHCR use the term 'meaningful link'. In UNHCR´s view, transit alone is not a meaningful link, unless there is a formal agreement for the allocation of responsibility for determining refugee status between countries with comparable asylum systems and standards (UNHCR, 2005a).

After the EU-Turkey statement, the Commission stated the view that 'transit through Turkey suffices for a sufficient connection to be established' (European Commission Director-General for Migration and Home Affairs, 2016).

In its judgment of 22 September 2017, however, the Greek Council of State did not rule that transit itself was sufficient, but instead stated that 'an applicant's transit from a third country may, in conjunction with specific circumstances applicable to him or her (such as inter alia the length of stay in that country or the fact that the country is located close to the country of origin), be considered as a connection between the applicant and the third country, based on which it would be objectively reasonable for him or her to relocate there' (AIDA, 2017).

This conclusion of the Council of State that mere transit is not enough, but has to be seen in connection with other facts, has been elaborated on by the Appeals Committees in two recent decisions (9th Appeals Committee, 2017; 11th Appeals Committee, 2017). In one decision, the Committee held that there was no sufficient connection with Turkey based on which it would be reasonable for the applicant to relocate there. Reference was made to the fact that the applicant's stay in Turkey was very short, not exceeding eight days, and that no supporting friendly network existed,

In the other case, the Appeals Committee also rejected the existence of a sufficient connection on the grounds that the applicants had stayed in Turkey for 15 days and

had no possibility of accessing a supporting network. The Committee stressed that a sufficient connection may be deduced from the existence of family or community ties, prior residence, visits for longer periods, studies or language and cultural bonds, but not solely from transit. In its conclusion, the Committee referred to the interpretation of the concept by UNHCR, which the Council of State had not taken into account.

2.3.3. Readmission

The principle that the applicant has to be readmitted to the third country has been cited as an important principle from the first elaborations on the concept (UNHCR, 1979; CoE, 1997; Council of the European Union, 1992a). The position of the UNHCR is that: 'The third country should expressly agree to admit the applicant to its territory and to consider the asylum claim substantively in a fair procedure' (UNHCR, 2005a).

In bilateral and multilateral agreements, like those Australia, Canada and the U.S. have, readmission will be directly regulated. In the Asylum Procedures Directive Article 38, the principle is regulated more as a safeguard: 'Where the third country does not permit the applicant to enter its territory, MS shall ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Chapter II.'

Some IGC EU MS have a reference in their national law indicating that it is a criterion that the applicant will be admitted to the third country.[17] United Kingdom is the only country of the IGC MS that has confirmed that they, as part of their Third Country Unit procedure, 'engage with the safe third country during proceedings to secure agreement that they will accept the return of the individual/s'(IGC, 2017b).

3. Practical application among IGC Member States

Recent queries and country reports show that even if the concept of safe third country is regulated in national legislation, few EU MS apply the concept in practice (ECRE, 2016b; IGC 2017b). Among the IGC MS, however, nine countries do apply the concept; Australia, Canada, United Kingdom, the Netherlands, Finland, Greece, Norway, Germany and Switzerland.

[17] United Kingdom, Netherlands, Belgium, Spain.

Most **IGC EU MS** apply the concept on an individual basis. Only United Kingdom, Germany and Switzerland have designated national lists of safe third countries. However, these lists are only containing EU MS, Norway and Switzerland.

The **U.S**. is the only country that is designated as a safe third country by **Canada,** and vice versa.

In **Australia** the safe third country concept according to the Migration Act applies to a non-citizen at a particular time if:

> '(a) the non-citizen is in Australia at that time; and
> (b) at that time, the non-citizen is covered by:
> (i) the CPA[18]; or
> (ii) an agreement, relating to persons seeking asylum, between Australia and a country that is, or countries that include a country that is, at that time, a safe third country in relation to the non-citizen (see section 91D); and
> (c) the non-citizen is not excluded by the regulations from the application of this Subdivision.'

3.1. Statistics

Several of the IGC countries that apply the safe third country concept, cannot draw relevant statistics from their national database. It is therefore difficult to conclude on the number of safe third country cases among the IGC countries, both cases assessed according to the national provision and the number of returns. With the exception of the application of the concept in Greece, Norway and the Netherlands, the statistics available show that the main part of the cases that have been deemed inadmissible according to the safe third country provision, are cases where a country in the EU, U.S. or Canada is defined as the safe third country.

3.2. How cases are identified

In some countries the safe third country provision has been used mainly for one specific case load, for example asylum seekers that come over a specific border crossing (the Greek islands, at the Russian/Norwegian border at Storskog and at the

[18]CPA means the Comprehensive Plan of Action approved by the International Conference on Indo-Chinese Refugees, held at Geneva, Switzerland, from 13 to 14 June 1989.

Canadian border points defined in the agreement between the U.S. and Canada). Everyone crossing at these borders will potentially have their application deemed inadmissible according to the safe third country provision.

In Australia, the safe third country provisions are considered as part of the protection visa assessment process. When assessing whether an applicant has protection in a safe third country, decision makers refer to the facts and circumstances of each case. They consider information provided by the applicant, including their life story and visa and passport evidence, and take into account relevant country information. In some cases, an applicant's consent may be sought to make enquiries about their right to enter and reside in a safe third country (IGC 2017b).

In the Netherland, Finland and United Kingdom, the safe third country provision is part of the asylum assessment process and cases are identified from information given in the asylum interview. In United Kingdom, cases will then be assessed in an accelerated procedure. United Kingdom also seem to be one of the few countries where the cases are handled by a specific unit, the 'Third Country Unit'. They also have an instruction 'intended to detail the responsibilities of referring offices/regions in the identification of third country cases and the process by which such cases are referred', and also current policy document on the concept (IGC, 2017b).

3.3. Return and appeals procedures

In most IGC countries, the actual return will be implemented by a designated part of the national immigration authorities. Information about actual returns and the number of returns to safe third countries was therefore difficult to get hold of in the context of this study.

Appeals procedures, including the right to an effective remedy and right to remain in the territory awaiting final decision, and right to legal assistance and representation are regulated in the Asylum Procedures Directive. Due to the complexity of these provisions and the variety of state practice, these themes were not dealt with in this study.

4. Focus countries

To get more in depth information about how the Safe Third Country concept actually is applied in practice, three IGC MS were chosen for a more in depth study. Information from Norway, the Netherlands and Greece show how the concept has developed nationally through political, legal and practical strands. Through these studies, some challenges and lessons learned are identified.

4.1. Norway

In 2015, a total of 31,145 asylum seekers were registered in Norway[19]. One sixth of the arrivals that year came over the northern Schengen border at Storskog, and were mainly third country nationals entering Norway from Russia. Previous years, very few asylum seekers had entered Norway over this border.
In autumn, the asylum system came under great pressure and the government announced at the end of October 2015 that it was 'necessary to review laws and regulations to reduce the number of asylum seekers coming to Norway' (Norwegian Ministry of Justice and Public Security, 2015e).

Already on 13 November, the government proposed a wide range of amendments to the Norwegian parliament, including an amendment of the national provision reflecting the safe third country concept (Norwegian Ministry of Justice and Public Security, 2015b). The parliament adopted the amendments, but decided that they should be temporary and that they should be evaluated. The amendments entered into force on 20 November 2015.

The legislative amendment concerning the safe third country provision was initiated at the political level and gave the immigration authorities extended powers to consider an application inadmissible if the asylum seeker concerned had already stayed in a safe third country.

The Norwegian Immigration Act Section 32 first paragraph (d) previously stated that an application for a residence permit under Section 28 may be denied examination on its merits if two criteria were present:

[19] In comparison Norway registered 11,983 asylum seekers in 2013, and 11,480 asylum seekers in 2014.

1. ‘the applicant has travelled to the realm after having stayed in a state or an area where the foreign national was not persecuted,
2. and where the foreign national’s application for protection will be examined.’

In the legislative amendment, the second criterion was deleted.

In addition to the legislative amendments, the Ministry of Justice and Public Security issued several instructions,[20] instructing the Police Directorate, the Directorate of Immigration (UDI) and the Immigration Appeals Board (UNE) on the interpretation of the law, priorities and the use of discretionary powers. Already on the 20 October, before the legislative amendments, the Ministry instructed the UDI on handling and prioritizing of the Storskog caseload (Ministry of Justice and Public Security, 2015a).

In the instruction from the Ministry of Justice and Public Security (2015c) to the UDI and UNE on 24 November 2015, the Ministry stated that it regarded Russia as a safe country for most third country citizens. The notion of Russia being a safe third country was also repeated in the media by several government ministers. The Directorate and the Immigration Appeals Board were, however, instructed to perform individual assessments of whether there were substantial grounds for believing that an applicant would risk ill-treatment in violation of ECHR Article 3 if returned to Russia in each case. Reference was made to the specific provision in the Immigration Act stating the absolute principle of non-refoulement, cf. the Immigration Act Section 73. If there was a real risk of ill-treatment, the application would be assessed on its merits in Norway.

The Ministry (2015d; 2015c) stated in the instructions issued to the Police Directorate on 24 November, and to the Directorate of Immigration and the Immigration Appeals Board dated 24 November, that in its opinion, the phrase ‘having stayed’ did not mean that a resident permit or any form of long-term stay was required. In a judicial review from 22 December 2015, Oslo District Court (2015) confirmed this interpretation, stating that ‘stay’ could be anything other than mere transit

In the instruction from 20 October 2015 the Ministry (2015a) further instructed the Directorate of Immigration that whether the applicant would actually be readmitted to

[20] The power of instruction is regulated in the Aliens Act § 76, amended 20. november 2015 nr. 94

Russia should not be a part of the assessment under the safe third country provision, cf. the Immigration Act Section 32 d).

Except for the 'having stayed' requirement, the national provision in Norway does not require that there has to be a connection between the asylum seeker and the third country. It is stated in the Act, however, that the application shall nonetheless be examined on its merits if the foreign national has a connection with the realm that makes it most logical that Norway examine it.

An interesting feature of the national provision is that the application can not only be deemed inadmissible if the applicant has travelled to the realm after having stayed in a state, but also in **'an area'.** This wording was inherited from the Immigration Act of 1988. It was not discussed in particular in the preparatory works to the new Immigration Act in 2008 or in the preparatory works to the legislative amendments in 2015/2016.

4.1.1. Norwegian experience of the safe third country concept

In connection with the Storskog caseload, there was a clear political will to handle this caseload in a specific manner. Legislative amendments were put in place in a very short space of time, the Ministry of Justice and Public Security had instruction authority, and used this authority to instruct the Directorate of Immigration, the Police Directorate and the Immigration Appeals Board.

After the legislative amendments and instructions issued by the Ministry, the Directorate of Immigration did not consider that there were specific unclear legal elements in relation to assessing the cases pursuant to the safe third country provision. In practice, the Directorate could concentrate on assessing whether return to a third country would be in breach of Article 3 ECHR, and whether the applicant had a connection with Norway that would make it most logical that Norway examine the application (Norwegian Directorate of Immigration, 2017).

The Immigration Appeals Board questioned some of the reasoning in the decisions by the Directorate, however. In February 2016, the Immigration Appeals Board (2016a) announced that it had reversed the decisions in 12 of 20 cases the Directorate had deemed inadmissible. In its assessment, the Appeals Board emphasised the kind of stay the person had or could expect in Russia, access to the

asylum system in Russia and the quality of the system. In some cases, the Appeals Board concluded that there could be a risk of refoulement. Two cases were assessed by the Grand Board in June 2016 (Immigration Appeals Board, 2016b). In these cases, the majority of the Grand Board concluded that it would not be contrary to the principle of non-refoulement, cf. the Immigration Act Section 73, to return Syrian men who had had long-term and lawful stays in Russia before travelling to Norway. Other nationalities and vulnerable persons had to be assessed on the basis of their individual situation. This decision set administrative precedence in Norway.

The Ministry of Justice and Public Security instructed the immigration authorities that handling the caseload should be prioritised and speeded up. The actual returns turned out to be more complicated, however, than initially expected by the Norwegian authorities. Russia and Norway had different interpretations of the readmission agreement and the criteria for whom Russia was actually obliged to readmit.

In April and November 2016, the Ministry (2016a; 2016c) issued new instructions to the Directorate of Immigration and the Immigration Appeals Board that persons who entered via Storskog in 2015 with a single visa, multiple visa and residence permits that were no longer valid, should be given an opportunity to have their applications assessed on their merits. The instructions were based on the assumption that return to Russia would not be feasible for these groups.

A total of 5,500 persons were registered entering via Storskog in 2015 (Norwegian Directorate of Immigration, 2015). Out of this number, 1,314 applications were initially deemed inadmissible. Of the 1,314 cases deemed inadmissible, 707 were later registered with a residence permit, while 369 persons are registered as having returned either to Russia or their country of origin (Norwegian Directorate of Immigration, 2017). Many persons decided to move on from Norway to another European country. From November 2015 until March 2017, the Directorate of Immigration have accepted 1267 take back requests (according to the Dublin Regulation) concerning persons that had entered Norway via Storskog.

4.1.2. Challenges

One challenge of applying the safe third country provision to the Storskog caseload was the practical issue of Norway and Russia not fully agreeing on the content of the readmission agreement. The number of returns to Russia was lower than Norwegian

authorities had expected. Many people had to wait in uncertainty for a long time, and many persons disappeared from Norway.

Another challenge was the very high influx of asylum seekers Norway experienced during the autumn. This influenced the ability to carry out good registrations and to accelerate procedures, something that, in turn, would influence the actual inadmissibility assessments.

The obstacles to the effective use of the safe third country provision in the Storskog caseload can therefore be said to be more practical rather than legal. The wording of legal provision, and the interpretation of it, was not seen as a challenge. The Ministry of Justice proposed in June 2017 that the legal amendments relating to the safe third country concept that were implemented temporarily in 2015 should be made permanent. The proposal is expected to be discussed in the parliament in December 2017.

4.2. Greece

In 2011, two national agencies, Asylum Service and First Reception Service[21], were established by law in Greece. Asylum Service (AS) began operating in 2013 as an autonomous state agency, and just two years after AS was established, Greece experienced an influx of approximately 1,000,000 migrants and asylum seekers over a period of 15 months[22], bringing the country under extreme pressure.

On 20 March 2016, a joint statement between the EU and Turkey was published, announcing a number of measures aimed at managing the flow of migrants and asylum seekers from Turkey to Greece, including admissibility assessments on the Greek islands. The first point of action in the statement stated that all new irregular migrants from Greece to Turkey would be returned to Turkey. The statement further ensured that all asylum seekers would be processed in accordance with the Asylum Procedures Directive.

The Greek Minister of Migration Policy supported the suggested measures, and the Asylum Service immediately started preparing for implementation. A new law, transposing the recast Asylum Procedures Directive into Greek law and establishing

[21] Renamed to Reception and Identification Service according to law 4375/2016.

[22] From January 2015 until March 2016.

a fast-track border procedure, L 4375/2016, was adopted on 3 April 2016. This law contains the safe third country provision from the Asylum Procedures Directive, and the Greek authorities chose to use the same wording as used in the directive.

As of 27 August 2017, a total of 25,364 asylum applications have been lodged on the Greek islands since the Statement was issued. Of these 25,364 applications, the Greek Asylum Service has taken 24,048 decisions, including 17,992 on admissibility and 7,372 based on the merits of applications (European Commission, 2017b).

4.2.1. The Asylum Service's experience of the safe third country concept

Faced with an extreme migration situation in 2015, and at the beginning of 2016, Greece was in need of measures to be proposed to ease the situation. They were, however, not prepared for the measures proposed in the EU-Turkey statement and the assignment to establish a mechanism in a very short space of time.

AS started adaptations immediately after the Statement, including amending the legal framework, collecting additional country of origin information, interpreting legal provisions, developing Standard Operating Procedures (SOP) and establishing the procedure on the islands.

In the fast track border procedure, AS first started assessing applications from Syrians, since there were guarantees from Turkish authorities regarding granting Temporary Protection to Syrians. Those applications were examined on the admissibility only. AS then started to assess applications from nationals from countries with recognition rate lower than 25 per cent. These cases were taken in an accelerated procedure, and the case worker could directly do an eligibility assessment.

Since the beginning of 2017, applications lodged by all other nationalities (for example Iraqis and Afghanis) are examined under admissibility first and, if deemed to be admissible, under eligibility. Almost all of these cases have been deemed admissible, since Greece does not have sufficient guarantees from Turkey on how these cases will be handled, upon return, and in particular about their access to the asylum procedure in Turkey, the actual content of the protection they will receive and whether this protection is in accordance with the Geneva Convention.

In the so called ‘merged workflow‘, implemented from the beginning of 2017, EASO will during the interview ask for information relevant both for the admissibility assessment and the eligibility assessment. The EASO will then first issue one opinion on admissibility. If the application is deemed to be admissible, according to the decision issued by the AS, then EASO issues the opinion on eligibility, and AS converts this into a decision.

Both EASO experts and AS case officers conduct interviews. AS has internal Standard operating procedures (SOPs) to guide their work, but there are also developed common SOPs with the EASO.

4.2.2. Success and challenges

Examining asylum applications under the admissibility procedure began almost in 48 hours. One main conclusion from the AS is that, even the mechanism was build up in very short period of time, it has proven to be a well-designed mechanism. The basic idea still remains one and a half years later and AS has issued more than 24,000 decisions. This part can therefore be considered to be a success.

Looking back, the AS acknowledges that they have been part of a unique experience establishing fast track border procedures, including admissibility procedures on the Greek islands. For the first time in EU history, the hotspot approach and joint processing of asylum cases (joint between EASO, Greek authorities and experts from EASO MS) has been used in migration management.

The main challenge the AS experienced when implementing the mechanism, was not related to the admissibility assessment as such, but more to the operational side of the mechanism; all the practical details, the actual establishment of hotspots, and all the different actors involved.

The AS also experiences some initial difficulties interpreting the legal framework. First of all, there was a question concerning access to a procedure in Turkey for Syrians, and the assessment of the guarantees from Turkey. There is no common European list of safe third countries or European guidelines, only a statement and a letter with guarantees. Second, the AS had to assess the risk of refoulement. AS did only have guarantees on temporary protection in Turkey. The question was therefore if this protection was in accordance with the 1951 Geneva Convention, cf. APD.

Another difficulty has been to interpret the criteria concerning vulnerability. Vulnerable persons, according to Art 14 (8) in L 4375/2016, are exempted from the border procedure cf. Art 60 (4). The reasoning behind this was that it would not be easy to provide special guarantees, according to Article 24(3) APD[23], to vulnerable applicants in the border procedure. They should therefore be taken out of the procedure.

Identification of vulnerable persons is an operational challenge, since a person can be detected to be vulnerable at any stage of the process. Initially, identification of vulnerable persons is part of the Reception and Identification procedures, conducted by the Reception and Identification Service (RIS). This presupposes available resources such as doctors and other trained personnel. But since vulnerability may come up during the examination of the asylum application, case officers with expertise in vulnerability assessments were also needed, something that was not initially available. Vulnerability experts were eventually deployed through EASO. Another challenge was that the AS and RIS did not develop at the same pace as regards vulnerability assessments.

The AS experienced that many applicants eventually would claim to be vulnerable according to Greek law. If vulnerable, a person would be taken out of the border procedure. According to information from the AS, of the 19,970 applications registered until 11 June 2017, 8,409 persons were referred to the regular procedure due to some vulnerability or because it was decided that the applicants would not be safe in Turkey and thus the asylum procedure was continued on the mainland (Greek Asylum Service 2017). EASO points out that the situation in the hot spots was so difficult that people could become vulnerable. At the same time the AS see that the possibility to be transferred to the mainland could tempt people to abuse the possibility to claim vulnerability, therefore the identification criteria and procedure needs to be clear and aligned among all the actors involved.

[23] According to Article 24(3) recast Asylum Procedures Directive, authorities must refrain from applying such procedures where they are unable to offer "adequate support" to applicants requiring special procedural guarantees.

Returns to Turkey

Since the date of the EU-Turkey statement, the total number of migrants returned to Turkey is 1,896[24]. There have, however, been no returns of persons whose applications have been deemed inadmissible. Until 6 September 2017, the returned persons had either received a negative asylum decision (including negative second instance decisions), had withdrawn their application for international protection, or had not applied for asylum in the first place (European Commission, 2017b).
The main reason for not being able to return persons whose applications were deemed inadmissible is that most of the cases have been appealed[25]. The Appeals Committees have not been able to conduct a quick assessment of the cases, with the result that they now have a backlog. At the same time, the Appeals Committees from the start reversed the first-instance inadmissibility decision in several cases[26] (Ekathimerini, 2017; European Commission, 2017b).

When the Greek Appeals Committees started issuing decisions in May 2016, they concluded in several rulings that Turkey could not be considered a Safe Third Country under Article 38 of the recast Asylum Procedures Directive. The Committees contested both that Turkey complied with the principle of *non-refoulement* and that the protection provided to individuals was in accordance with the 1951 Refugee Convention. The fact that temporary protection is not defined as a form of international protection and the lack of access to residence permits in Turkey were mentioned as arguments for concluding that the core elements of protection in the Convention are not satisfied (European Database of Asylum Law, 2016b).

In autumn 2016, Greece adopted legal provisions to put in place a new Appeal Authority and new Appeal Committees to examine the appeals lodged after 20 July 2016. The Appeals Committees still end up with some decisions confirming and some reversing the first-instance decisions.

[24]Since 20 March 2016, there were 1,307 returns to Turkey under the EU-Turkey Statement and 589 returns under the Greece-Turkey bilateral protocol.
[25]As regards cases on the Greek islands, the total number of appeals against the 5,225 negative first-instance decisions so far on admissibility and on merits by the Asylum Service is 4,160.
[26] Out of the 556 appeal decisions on admissibility, 135 second-instance appeal decisions have confirmed the first-instance inadmissibility decisions, while 421 second-instance appeal decisions have reversed the first-instance inadmissibility decision.

Two appeals where submitted to the Council of State, and the Court's decision on the two cases came on the 22 September 2017, basically confirming the assessments made by the AS and the Appeal Committees. In the aftermath of this decision, the AS expected that the Appeals Committees would be able to issue decisions more rapidly.

The Appeals Committees have, however, after the judgements from the Council of State, elaborated further on the conclusion by the State of Council that mere transit is not enough, but has to be seen in connection with other facts. In two recent cases the Appeals Committees have reversed the first instance decisions arguing that a sufficient connection does not exist (9th Appeals Committee, 2017; 11th Appeals Committee, 2017).

Political, legal and practical strands

The implementation of an admissibility procedure in Greece happened, not because there was a clear political will at national level, but because there was a political will at the EU level. The Commission continuously monitored the process. An EU Coordinator was appointed, the existing Commission team in Greece was reinforced and a steering committee established[27] (European Commission, 2016c). The implementation was discussed in the steering committee and decisions on future actions were taken in this forum. Recommendations and priorities can be seen in the reports on the implementation of the EU-Turkey statements published as reports from the Commission.
As the EASO points out, the Commission and EU MS had very high expectations on how fast they would see the results of the Statement.

The Asylum Service managed to implement a mechanism in a short period of time, and did this with a unique cooperation with EU, EASO and UNHCR. More than 24,000 decisions have been issued within this procedure. Greek authorities had no previous experience in using this provision, and the concept went in a very short time, as the AS phrased it, ‘from forbidden word to practice’.

[27]The committee was chaired by the Commission and had representatives from Greece, the European Asylum Support Office (EASO), Frontex, Europol, and representatives of the Netherlands (Council Presidency), France, the United Kingdom and Germany.

AS worked closely with the EASO from the very start. Even though it was challenging to work closely with an EU agency on a national procedure, the cooperation is referred to in very positive terms by the AS. The presence of, and close cooperation with, the EASO, meant that the AS was able to draw on the expertise of EASO in matters in which AS did not have expertise itself and have access to experts from other EASO MS.

EASO in Greece confirms that the cooperation with Asylum Service has been an excellent and close cooperation where there has been an open dialogue, both at management level and the practical level. EASO points out the importance of having knowledgeable, flexible, counterparts both at the EU and AS, interested in doing a common project. From EASOs point of view, this has been the case in Greece.

The lack of established jurisprudence has however led to a lengthy process and difficult humanitarian and security situation at the Greek islands. There are still no returns to Turkey of persons whose applications have been deemed inadmissible according to the safe third country provision.

The decisions from the Appeals Committees show that there is room for interpretation regarding the safe third country provisions. Even after the judgements from the Council of State, the Appeals Committees continue to develop their interpretation of the provision.

The Asylum Service also recognises that there is still a need to interprete the provision and that there will still be challenges in how to apply the concept.

Commenting on the new proposal for an Asylum Procedures Regulation, one of the main arguments in the Greek position is that there should be an EU list of safe third countries.

4.3. The Netherlands

The number of asylum applications in the Netherlands[28] in 2015 amounted to 58 880, with arrivals reaching a peak in September and October (Immigratie- en Naturalisatiedienst, 2015). The total number in 2015 was almost double the amount from the year before and three times more than in 2014.

[28] First applications, repeated applications, family reunification

Some features of the political environment in autumn 2015 are worth mentioning. First of all, there was a fragile government coalition between the Liberals and the Labour Party. In April 2015 the government almost fell due to an asylum policy question, the 'bed, bath and bread' case (The Economist, 2015). In this case the government parties disagreed on services to be provided in reception centers to asylum seekers with a final rejection.

Second, Geert Wilders Party for Freedom gathered more and more support as the crises escalated. The tension and frustration this created is visible in a heated debate on how the crisis was conceived and possible solution in Parliament 10 September 2015 (YouTube, 2015).

Third, all through 2015 Netherland prepared for their Presidency of the Council of the European Union (first half of 2016).

In this political environment, a letter to the House of Representatives was sent from the State Secretary for Security and Justice and the Minister for Foreign Trade and Development Cooperation (2015), also on behalf of the Minister of Foreign Affairs. In this letter dated 8 September 2015 the Parliament was informed of Netherlands' input into the European decision-making process on future migration management. In retrospect, this letter seems to have influenced later developments in the Netherlands regarding the use of the safe third country provision, both political and legislative developments.

4.3.1. Implementation and interpretation of the Asylum Procedures Directive

The recast Asylum Procedures Directive was transposed into Dutch legislation on the 20 July 2015. The provision on safe third country in the Aliens Act has the same wording as the provision in the Asylum Procedures Directive. The concept is further regulated in the Aliens Regulation, Aliens Decree, and Aliens Circular.

The assessment of whether a country is a safe third country is in the Netherlands incorporated in the standard asylum procedure. A case officer will first assess whether the asylum seeker will not face persecution or a risk on serious harm in that third country, whether the third country will respect the principle of non-refoulement and if an asylum seeker in this country will be able to request refugee status and receive protection in accordance with the 1951 Geneva Convention. The case officer

will then assess the link or connection between the asylum seeker and the third country. The Aliens Circular states that a special connection exists where the applicant for example has a spouse or a partner who holds the country´s nationality, has a family member residing in the country with whom he/she is still in contact, or has stayed in the country. Whether the asylum seeker actually will be readmitted to the third country is not a part of this initial assessment.

Dutch authorities are not able to draw statistics on how many cases that have been deemed inadmissible due to this safe third country provision, but these cases do not constitute any significant part of the total caseload. The provision has initially been seen as a somewhat obscure provision, due to the few cases and the difficulty to apply it. Many case officers will therefore choose to assess the case on its merits.

Even if the provision is not used in many cases, there have been at least 12 cases before the District Court Hague during 2016 and 2017[29]. The fact that there are cases before the courts suggests that practice is picking up recently. The Immigratie- en Naturalisatiedienst (IND) confirms that this seems to be a trend.

4.3.2. Legal interpretation

The cases available from the District Court of Haag, show that the concept have been used on different countries like Egypt, Lebanon, United Arab Emirates, Kuwait and Russia. In many cases the applicant has close family ties in the third country and/or stayed in the country for a long period of time. In the cases reversed by the District Court, the reasons seem to have been that the decision have been insufficiently motivated nor carefully prepared, specifically concerning the possibility to request asylum in the third country in question. The link established by the IND in these cases has, however, not been questioned by the Court.

The current interpretation from Dutch courts when it comes to level of protection is that the relevant issue is not whether a third country is a party to the Convention or not, but if the possibility exists to request refugee status and receive protection provided in accordance with the 1951 Geneva Convention (European Database of Asylum Law, 2016a). Many of these countries leave the assessment of claims for asylum to the UNHCR.

[29] These cases are available from https://uitspraken.rechtspraak.nl

A principal judgment is expected from the Council of State later this autumn. The Council of State has been asked to answer if it is necessary that the country is party to the 1951 Geneva Convention, if it is enough that the UNHCR provide protection, and also elaborate on the legal and factual criteria for concluding that the country is providing protection in line with the 1951 Geneva Convention.

On the 20 July 2016 the Dutch Council of State delivered an opinion (2016) regarding the interpretation of the safe countries concepts in the Dutch law. The background for the opinion was the safe country of origin concept, but parts of the opinion were explicitly said to cover article 36, article 37 and article 38 in the APD. This goes for the part where the General Advocate discusses whether a country can be regarded as safe if it is not safe for everyone, and if only parts of the country can be regarded as safe. The conclusion was as follows;

- ‘A country can not be regarded as a safe country if for pre-clearly identifiable (minority) groups of a certain size, such as LHBTI or women, systematic risk of prosecution or inhuman treatment exists.
- Nor can a country be considered a safe country if the security situation is fluid or if parts of that country are unsafe unless the unsafe part is a very small part of that country.
- The Secretary of State may designate a country as a safe country with the exception of clearly identifiable (minority) groups, such as LHBTI or women.
- The Secretary of State may designate a country as a safe country with a geographical restriction for an unsafe part of that country, but only if a clear dividing line can be applied between the safe and the non-secure part.’

The Advocate General also commented that Article 30 in the Asylum Procedures Directive from 2005 explicitly opened up for the possibility to deem a part of a country of origin safe.

There seems to be a development in the Netherlands where case officers are more aware of the possibility to use the provision concerning safe third countries, and try the concept in individual cases and on new countries. When these cases have been appealed, the courts have been able to give their interpretation of the concept.

At the same time, it is clear that the legal initiative and development of the concept of safe third countries in the IND did not happen in a political vacuum, even if there were no clear political instructions on the prioritization of this caseload or on how to use the provision.

4.3.3. Political initiatives

In the letter to the Parliament on the 8 September 2015, the ministers first of all confirmed the importance of European cooperation in the field of migration management.

It is then stated that the ultimate goal for European migration management is UNHCR registration and reception in the region, and that this strengthening reception capacity in the region should be developed together with the option of resettling refugees in Europe.

> 'The fundamental principle will continue to be that people are offered protection. If they come from a part of the world with safe reception and adequate procedures which take account of individuals´ specific background, they will be sent back on the basis of agreements with those countries where reception is available so that they can be protected there. Their application for asylum in Europe can then be rejected, within the current international and European legal framework, on the grounds that they are in a safe third country' (Dutch State Secretary for Security and Justice et al., 2015).

During and after the migration crises in 2015, the EU and many political leaders have supported building capacity in the region and partnership with third countries. The letter to the parliament in September 2015 is however the first time the link between this external dimension and use of the safe third country provision is used explicitly.

In the Dutch context, this letter from September 2015, can be seen as a turning point for Dutch policies in this area. The language in the letter is reflected in later political opinions in the Netherlands. Even if the letter to the parliament did not immediately lead to many cases being deemed inadmissible, it gave a momentum to spread these thoughts to the EU. The Netherlands could start broadcasting, that their position was to first help (third) countries getting safer, then use the safe third country provision.

The Dutch government knew however that it would take time to build targeted capacity in the regions, to gather support for this approach to manage migration and to get the system work. In an interim phase it will be important to reach a broad agreement on the end goal. While continuing to guarantee protection in Europe and reaching an agreement on distribution within Europe, 'an expansion of the 'hotspot' approach outside Europe's borders and agreements between destination and transit countries will be an inextricable part' of the interim phase.

The EU-Turkey statement, however, had the effect that the Dutch approach suddenly became more feasible. An interesting feature with the EU-Turkey statement, is that the coalition partners Rutte and Samson, disagreeing earlier that year on another migration issue, according to the Volkskrant seemed to have an important role in actually getting in place an agreement between the EU and Turkey (Volkskrant, 2017).

In October 2017 the new coalition partners[30] in government presented their agreement entitled 'Confidence in the Future'. Among the topics discussed in this document, there is also specific mentioning of the safe third country concept under the heading ‘A humane and effective migration policy’.

In this part of the agreement, the government goes through a line of reasoning on how one can build reception capacities in a host or transit country, preferable in cooperation with the host state, or UNHCR, and after an accelerated procedure send an asylum seeker back to reception facilities in the region in accordance with the safe third country principle. The importance of addressing root causes, resettlement and migration agreements with third countries is also mentioned in this agreement.

The positions of the ministers in September 2015 are in this way repeated in the new government´s coalition program. It is not yet fully known, how these political views will be implemented in practice.

4.3.4. The revision of the Asylum Procedures Regulation- the question of ‘gold-plating’

When it comes to the new Asylum Procedures Regulation, the Dutch Ministry of Justice and Security refers to the question of so called gold-plating of EU directives.

Gold-plating is a term often used when EU MS exceeds the requirements of EU legislation when transposing Directives into national law (European Commission, 2011a). In this case however it is rather a case of requirements laid down in EU legislation (and consequently transposed into national law of the EU MS) which arguably exceed those in international law.

The term fit the ongoing process in the EU of revising the safe third country provision. In the process of negotiating this provision, one can choose to refer strictly to

[30] Mark Rutte (VVD), Sybrand Buma (CDA), Alexander Pechtold (D66) and Gert-Jan Segers (ChristenUnie).

international obligations, or chose words and requirements that go beyond the minimum necessary to comply with international obligations. Going beyond a minimum might give the provision a golden look, but it could also in the end make the provision difficult to use in practice and thus undermine the purpose.

The Netherlands agree with several other countries that the proposed provision on safe third countries still has to many requirements, and that these requirements makes the provision very difficult to use. The “gold-plating” of the directive should be taken away. This would mean that the provisions should be closer to strict international obligations, with no additional requirements.

Regarding the possibility to request and receive protection in accordance with the 1951 Geneva Convention, cf. Article 38 (1)(e) of the Asylum Procedures Directive, Dutch courts are now in the process of interpreting this principle. The proposal from the Commission amending this part of Article 38[31], is not seen by the Ministry to bring immediate clarity to the provision.

The Commission has further proposed that transit could be a sufficient link, but at the same time added the requirement that the third country transited through is ‘geographically close to the country of origin of the applicant’. The Netherlands agree that the link-criteria should be lowered, but have doubts about the second addition the Commission has suggested, i.e. that the third country must be geographically close to the applicant´s country of origin.

In the negotiation of new provision of the Asylum Procedures Regulation, the EU MS discuss the exact wording of the provisions. Detailed provision could be easier for national authorities to apply, as long as they do not need further interpretation. Detailed provisions are however, according to the Ministry of Justice and Security, difficult to negotiate. More open provision will be easier to negotiate, but these provisions will often also be open to interpretation.

To develop a common list of safe third countries is not a top priority for the Netherlands. It has been difficult to agree on the safe country of origin list. The Netherlands will probably support a list of safe third countries, but would argue that it

[31] Wording of the proposal: ‘the possibility exists to receive protection in accordance with the substantive standards of the Geneva Convention **or** sufficient protection as referred to in article 44 (2), as appropriate’,

should still be possible to apply the concept in individual cases, on basis of the information in that particular case, even if the third country is not on a list. A list would probably make it more easy for case workers to identify cases, and make them more aware of this type of cases.

When it comes to Article 45 (5) regarding unaccompanied minors, the Commission suggests that an EU MS must get a confirmation from the authorities in the third country, that the minor shall be taken in charge of those authorities and immediately have access to protection referred to in Article 45 (1)(e). The position of the Netherlands is that the sending state must have guarantees, for example of adequate reception, but these guarantees do not have to be state guarantees.

5. Recast 2016 – towards harmonisation?

As part of the reform of the CEAS, the Commission published a proposal in July 2016 to replace the current directive with a regulation establishing a common procedure for international protection. The proposal is now being considered in accordance with the EU's standard decision-making procedure, whereby the European Parliament has to approve the legislation together with the Council. The proposal has been assessed by the Parliament (2017a) and discussed in the Asylum Working Party of the Council.

There appears to be agreement in EU institutions, and among EU MS, that community law in this area should be developed even further in order to achieve more harmonised rules and practices (Council of the European Union, 2017). However, at the outset of negotiations, there are different perceptions of how the safe third country provision should be.

5.1. Proposal from the Commission

For the Commission, it is a clear goal to reach full harmonisation of procedures. In order to reach this goal, they have proposed to change the directive into a directly applicable regulation. The proposal for an Asylum Procedures Regulation further stipulates a mandatory inadmissibility procedure, and imposes safe country concepts as mandatory concepts to be applied by national asylum administrations. The Commission also suggests changes regarding the level of protection and the

connection criteria, regulated in article 45 of the proposal (European Commission, 2016f).

While Article 38 (1) (e) now states that the safe third country concept may only be applied where 'the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention', the proposed new wording is that 'the possibility exists to receive protection in accordance with the substantive standards of the Geneva Convention or sufficient protection as referred to in article 44 (2), as appropriate'**.**

Pursuant to APD Article 38 (2)(a), a connection is required to exist between the applicant and the third country, which would make it reasonable for that person to go to that country. In the Commission's new proposal, the provision starts in the same way, cf. Article 45 (3), but the following specification is added: 'including because the applicant has transited through that third country which is geographically close to the country of origin of the applicant'. This proposal reflects the content of the Commission's statements in connection with the implementation of the EU-Turkey statement (European Commission Director-General for Migration and Home Affairs, 2016).

In addition to making the concept mandatory for EU MS, the Commission sets a lower threshold in its proposal for the level of protection and the connection with the third country concerned. It could be argued that this would allow for a significantly broader application of the safe third country concept than is currently possible under EU law, especially regarding the connection criterion. The criterion concerning the protection level is still vague, however, and it refers to standards not defined in international law, for example 'substantive standards of the Geneva Convention' and 'sufficient protection' (ECRE, 2016b).

In the Commission's proposal, third countries shall be designated as safe third countries at Union level, cf. Article 46, leaving MS the option of retaining or introducing legislation that allows for national designation of safe third countries, for a period of five years from the regulation enters into force. The assessment of whether a country may be designated as a safe third country shall, according to the regulation, be based on a range of sources, including information from the European

Union Agency for Asylum (EUAA). The EUAA will also have a role in reviewing the situation in third countries together with the Commission, cf. Article 46 (2).

In the proposal for the Asylum Procedures Regulation, there are several other references to the possible support by the EUAA. The agency is envisioned to provide the Member States of the agency with the necessary operational and technical assistance, including experts that can assist national authorities to receive, register, and examine applications for international protection. 'When applying this Regulation, Member States should take into account operational standards, indicators, guidelines and best practices developed by the European Union Agency for Asylum' (European Commission, 2016f).

In the context of recast 2016, the concept of safe third country is also mentioned in the regulation establishing the EUAA (European Commission, 2016d) and in the revised Dublin Regulation (European Commission, 2016e). A new provision of the Dublin Regulation introduces an obligation for the Member States bound the Regulation to check whether the application is inadmissible, on the grounds that the applicant comes from a first country of asylum or a safe third country. This shall be done before the start of the process of determining the Member State responsible.

5.2. Comments from the Parliament and ECRE

When commenting on the proposal, the Parliament (2017b) has taken a different approach to the concept of safe third countries. Their main points can be summed up as follows;

- For a third country to be considered safe by a MS, that third country must have signed up to and ratified the GC without any geographical limitations.
- Mere transit should not be sufficient to warrant return to a so-called safe third country.
- Admissibility checks should be removed as a requirement before using the Dublin criteria.
- The concept of safe third country should remain an optional concept for EU MS. There should therefore be no common lists.

Comparing the proposal from the Commission and the comments from the Parliament, there seems to be two very different approaches to the safe third country concept. In addition to this, EU MS and NGO's also have their approach.

In November 2017 ECRE issued a policy note 'Debunking the 'safe third country' myth'. Referring to the discussions in the EU institutions, ECRE writes that 'some EU Member States have floated far-reaching proposals to lower the currently applicable standards, going below the already questionable proposals submitted by the EC' (ECRE, 2017). ECRE end their policy note with six recommendations, agreeing with the Parliament in several of them.

6. Some future trends

In February 2017 a so-called 'France-Germany Note' was distributed in the EU, addressing 'A crisis-resilient Common European Asylum System (CEAS)' (Statewatch, 2017). It is stated in the note that

> 'The key element of such a crisis mechanism would be the stipulation that, in case of a crisis, a State may also be considered as a safe third country if it respects the non-refoulement principle and – potentially on the basis of respective guarantees taken by the EU – it provides to returned or transferred asylum seekers safe and human living conditions, at least meeting the standards of art. 3 of the European Convention on Human Rights (ECHR)'. 'It would suffice if these requirements were fulfilled only in those regions where asylum seekers would be transferred to. Both a transit state and a third state ready for reception could qualify as a safe third country.'

The note is of unknown origin and standing, but it contains interesting thoughts that others also express, not only in case of a crisis. The note does not just raise the perception that it might be sufficient that the requirements in international law are fulfilled in a region of a country and not in the entire country, but also the perception that it is sufficient, in order to apply the safe third country concept, for the third country to meet the standards of Article 3 ECHR. Finally, the Note states that

> 'a third country ready for reception could qualify as a third country […]. For persons in need of protection, resettlements to Europe or other States would have to be offered'.

One relevant question for the future that can be derived from this note, is whether it is sufficient that part of a third country, and not the entire country, is safe. It could be argued that this would be in line with the reasoning behind the 'internal flight

alternative' cf. Article 8 of the Qualification Directive. Article 30 in APD from 2005 also explicitly opened up for the possibility to deem a part of a country of origin safe. However, this provision was deleted in a later revision.

This notion can be found in documents from Norway and the Netherlands. National legislation in Norway is worded as follows: 'the applicant has travelled to the realm after having stayed in a state **or an area** where the foreign national was not persecuted' (Norwegian Immigration Act 2008). According to the preparatory works, this part of the provision was not discussed in particular in connection with the recent amendments.

The Council of State Advocate General in the Netherlands stated in his opinion on the Safe Country concept in asylum cases that the Secretary of State may designate a country as a safe country with the exception of clearly identifiable (minority) groups, and that the Secretary of State may designate a country as a safe country with a geographical restriction for an unsafe part of that country, but only if a clear dividing line can be applied between the safe and the non-secure part (Dutch Council of State, 2016).

Regarding protection level, one could argue that this has been lowered in the Commission´s proposal for the APR, but not to the level of only reflecting the standards of Article 3 ECHR. Having a provision reflecting Article 3 ECHR would however be in line with the national provision in Norway and in Australia, and it would be a provision without any 'gold-plating'.

According to the Note, both a transit country and a third state ready for reception could qualify as a safe third country. The idea of having reception centres in a country between the country of origin and Europe has been launched by several actors. There has also been a political interest to intercept migrants in the Mediterranean and to return them to such reception centers (Barigazzi, 2017; Shahal, 2016; Kurier, 2016). This idea was broadly discussed in 2003-2004, also among the Member States of the IGC (Ward, 2004).

Like EU and IGC discussions in 2003-2004 showed, the establishment of protection zones in third countries would be challenging for many reasons. The same legal and practical questions, as were addressed for almost 15 years ago, would still have to

be answered. One could argue that there are some developments that could make the discussion different today than in 2004. Three main developments are the development of the external dimension of EU´s migration management, the development of CEAS including a common legal provision enabling EU MS to return asylum seekers to a safe third country, and the establishment of the EASO.

The Dutch government, in their coalition agreement from October 2017, is one of the first actors to make the explicit link between building capacity in third countries including establishing reception centers there, and the use of the safe third country provision in order to legally return person to these third countries, as long as it is in accordance with the Asylum Procedures Directive. The question is whether the proposed provision in the Asylum Procedures Regulation could be applied to situations described in the France-Germany Note or in the Dutch coalition agreement. If the proposed provision is not seen as suitable, the EU MS could use the ongoing negotiations on the Asylum Procedures Regulation to agree on a provision customized for this use.

Such a provision must safeguard that there should be no real risk of ill-treatment according to ECHR Article 3, including the principle of non-refoulement. The provision could further more explicit state that the third country must ensure the possibility to apply for protection at host governments or UNHCR, but not actually receive protection in this country, other than protection against ill-treatment and refoulement. Neither the current safe third country provision nor the new proposal states that protection actually has to be received in the third country where refugee status has been requested. In the case brought before the Council of State in the Netherlands, the Council of State is asked to assess whether it is in accordance with the safe third country provision in national law that UNHCR is in charge with the status determination, and whether it is sufficient that the third country ensure non-refoulement until a durable solution is found.

Another question will be if the safe third country provision needs to require a link between the asylum seeker and the third country. The thought has been raised that reception centers can be established in any country that are willing to receive asylum seekers. This does not necessarily have to be transit countries. This could be resembled to the Australian model under which asylum seekers arriving by boat to

Australia is automatically sent to a third country (either Nauru or Papua New Guinea) with which Australia has agreements for this purpose.

The connection criteria could be deleted, since this is not required under international law. At the same time this would undermine the reasoning behind the original concept. One could of course choose to define connection more like the Australian provision, cf. Section 91 D (2), stating that ‘a person may have a prescribed connection with a country if the person is or was present in the country at a particular time or at any time during a particular period; or the person has a right to enter and reside in the country (however that right arose or is expressed)’ (Migration Act 1958).

If choosing a ‘minimum’ provision like described above, EU MS could ensure that there are resettlement schemes in place, as well as other possibilities for durable solutions. A right to voluntary return could also be explicitly stated.

Another scenario for the future would be that the EU MS end up with the proposed provision of safe third countries. This could either mean that the provision goes back to being a ‘dead letter’, or that the concept is developed through judicial and practical strands. The Netherlands and Greece have experiences in using a provision with some more requirements than the basic international obligations, and the concept is currently being interpreted in their national judicial systems. If the proposed provision in the Asylum Procedures Regulation is adopted, more interpretation by national and European courts is expected to be needed, in order to effectively use the provision.

A more harmonised practice can also potentially be achieved through practical support from EASO. The agency is envisaged to have a practical role in providing information about safe third countries and in the review of the situation in these countries. EASO also have the capacities to have a role in mapping state practises, national jurisprudence and jurisprudence from the European courts and write practical guides like they did on the Implementation of Article 15 (c) Qualification Directive (EASO, 2015). As a follow up, EASO can also be a forum where the Member States of the agency can discuss and establish common practice.

7. Conclusions

The concept of safe third countries has been part of the international asylum discourse for many years. It has been implemented in national law, discussed in international forums, and criticised by scholars and NGOs. Information from the IGC MS and from the EU MS show however that few countries use the concept extensively. One could therefore be inclined to conclude that the concept is of little practical use.

The sum of political, legal and practical developments during the last two years leads to another conclusion, namely that the concept has had a political revival and is more relevant than ever in 2017. The concept of safe third countries is institutionalised in EU community law, and was recently applied to large asylum caseloads by Greece and Norway. It is established practice in Australia and a relevant concept in Canada.

One conclusion that can be drawn from the past two years and the experience from Norway and Greece, is that, if there is a strong **political** will, either nationally or at the EU level, the concept of safe third country can be applied to specific situations. Initial difficulties in applying the concept can be overcome by amending the law, obtaining guarantees, building capacity in third countries and/or making use of the practical help from EASO to implement a national scheme.

The concept is subject to **legal** developments, both through the revision of the Asylum Procedures Directive and cases brought before national courts, the CJEU and ECtHR. Legal development also take place at the national level, by case handlers that start to apply the provision, like seems to be the case in the Netherlands.

In all focus countries, many of the first instance decisions have been appealed and a number of decisions have been reversed. For Greece and Norway this led to a lengthy procedure where many asylum seekers have waited a long time before they have got a final decision.

The concept of safe third country was used on a large scale in Greece and Norway, but the actual return of asylum seekers to the third country proved to be difficult. For Norway, the main reason was that the parties had a different understanding of the

bilateral readmission agreement, while, for Greece, the reason was a lack of established case law.

In order to ensure effective implementation in the future, one could argue that it is important with a clear and simple legal provision, together with the existence of established case law. Assurances that readmission is guaranteed is also important regarding effective implementation.

Establishing new practice in Norway and Greece gave rise to national and international discussion about whether the third countries were actually safe. The establishment of common lists of safe third countries at Community level, with the support of EASO, might prevent some of this public discussion and make implementation more accepted. Common lists would also make it easier for case officers to identify cases where the concept can be applied.

Both Greece and Norway experienced challenges in establishing the inadmissibility procedure. The experience of establishing new procedures in a short period of time and in times of high influx of asylum seekers, should be used to develop contingency plans.

7.1. The way forward

In 2017, building capacities in host countries and transit countries is a priority issue for EU MS. This may enable these countries to offer safe and adequate reception facilities in the region. Such reception facilities can be an alternative to further migration to the north, but also be a place where asylum seekers are returned to, after their application has been deemed inadmissible, according to the safe third country provision. If not the entire country as such can be deemed safe, the existence of reception centers or areas in a third country can arguably be sufficient in order for EU MS to return asylum seekers back to this country.

The UNHCR (2016b) does not seem to dismiss this line of reasoning. In their note on ‘Better protecting refugees in the EU and globally’, from December 2016, UNHCR writes about strengthening asylum systems in host and transit countries. Once the asylum systems in these (host) countries are fully functioning, ‘processing of claims in these countries for asylum to EU MS could be considered as a way to share responsibility’.

Like discussions in 2003-2004 showed, the establishment of protection zones in third countries will be challenging for many reasons, and raise legal and practical problems where there are no good solutions yet. There are however some developments since 2004 that could be said to have changed the realities and the starting point for new discussions.

- The new EU migration partnerships and the Valletta Action Plan have given new impetus to EU cooperation with external partners (Hofmann, 2016).
- The existence of a CEAS, and more specifically provisions on safe countries, give EU MS a different legal basis to return asylum seekers to safe countries.
- The existence of the EASO means that Member States of the agency can get practical help in implementing new measures and using the legal framework.
- Joint processing of asylum applications is no longer only a vague idea, but a reality on the Greek islands.
- The existence of relevant case law from national and European courts could provide legal guidance and eventually become established case law.

The legal bases for return to reception facilities in a third country can be found in the Asylum Procedures Regulation. The question right now, when the EU MS are discussing the wording of this provision in the Asylum Working Party, is how the EU in this specific provision can manage to reconcile international obligations and national interests, and if the provision will be amended to meet the political objectives stated by some MS.

7.2. Recommendations

In order to use the provision more effectively, some general recommendations can be made based on the study:

- There is a need to 'whitewash' the concept of safe third countries. The concept has negative connotations. Important measures in this regard should be a to have provision without many unclear terms, more information about how many cases the concept actually applies to and information about best practises and legal interpretation.
- The wording of the provision should be as clear and simple as possible.
- There must be a readmission agreement in place ensuring returns.

- There must be resettlement schemes in place and other durable solutions.
- The possibility to voluntary return should exit at every stage of the process.
- Countries should have contingency plans, including the use of the safe third country provision.

7.3. Further research

Looking into states legislation and national practices, some topics for further research have been identified:

- There is a need for an overview of key relevant jurisprudence, both from European national courts, ECHR, CJEU and Australia. Especially the interpretation and use of the term ‘effective protection’ and ‘sufficient protection’ should be examined.
- A comparative analysis of appeals procedures could be initiated, including the right to an effective remedy and right to remain in the territory awaiting final decision, and right to legal assistance and representation.
- Reception centres in host countries or in the region could mean extensive use of detention. Research on how detention affect people exist, but it could be relevant to map the research available, and to summarize the main conclusions of the existing research.
- Pressure on national asylum systems or changes in legislation could for many asylum seekers mean that they have to wait for a long time before their get a decision, and their situation will be characterized by uncertainty for a long period of time. It could be relevant to look into what kind of consequences this (waiting in uncertainty) will have for the individual and for the society. One hypothesis would be that predictability and rapid assessment of an application will be less an intervention that a long waiting period in uncertainty, even if the predictability is the knowledge that the application would be deemed inadmissible or rejected.

Bibliography

Amnesty International Canada and Canadian Council for Refugees (2017) *Contesting the Designation of the US as a Safe Third Country*) [Online]. Available from: http://ccrweb.ca/sites/ccrweb.ca/files/stca-submission-2017.pdf [Accessed 16 October 2017]

Australia (1958) *Migration Act 1958*.

Asylum Information Database (AIDA) (2016a) *Country Report: Greece,* Update March 2017. [Online]. Available from: http://www.asylumineurope.org/reports/country/greece [Accessed 10 November 2017]

Asylum Information Database (AIDA) (2016b) *Country Report: Netherlands,* Update March 2017. [Online]. Available from: http://www.asylumineurope.org/reports/country/netherlands [Accessed 10 November 2017]

Asylum Information Database (AIDA) (2016c) *Country Report: Spain,* Update February 2017. [Online]. Available from: http://www.asylumineurope.org/reports/country/spain [Accessed 10 November 2017]

Asylum Information Database (AIDA) (2016d)*Country Report: Sweden,* Update March 2017. [Online]. Available from: http://www.asylumineurope.org/reports/country/sweden [Accessed 10 November 2017]

Asylum Information Database (AIDA) (2016e)*Country Report: United Kingdom,* Update February 2017. [Online]. Available from: http://www.asylumineurope.org/reports/country/united-kingdom [Accessed 10 November 2017]

Asylum Information Database (AIDA) (2017) *Greece: The Ruling of the Council of State on the Asylum Procedure Post Eu-Turkey Deal*. [Online]. Available from: http://www.asylumineurope.org/news/04-10-2017/greece-ruling-council-state-asylum-procedure-post-eu-turkey-deal [Accessed 10 November 2017]

Barigazzi, J. (2017). *Malta calls for new ways to send back more migrants.* [Online]. Politico 27 January 2017. Available from: https://www.politico.eu/article/malta-calls-for-new-ways-to-send-back-more-migrants-europeaan-commission-north-africa/ [Accessed 10 November 2017]

Carrera, S. and Guild, E. (2017) *Offshore processing of Asylum Applications: Out of sight, out of mind?*, CEPS Commentaries.

Council of Europe (1950) *European Convention for the Protection of Human Rights and Fundamental Freedoms*, 4 November 1950.

Council of Europe, Committee of Ministers (1997a) *Recommendation N° R (97) 22 of the Committee of Ministers to Member States containing Guidelines on the Application of the Safe Third Country Concept*, 25 November 1997, Rec (97)22.

Council of Europe: Committee of Ministers (1997b) *Explanatory Memorandum to Recommendation No. R (97) 22 of the Committee of Ministers to member states Guidelines on the application of the safe third country concept*.

Council of the European Union (1992a) *Council Resolution of 30 November 1992 on a Harmonized Approach to Questions Concerning Host Third Countries ("London Resolution")*, 30 November 1992.

Council of the European Union (1992b) *Council Resolution of 30 November 1992 on Manifestly Unfounded Applications for Asylum ("London Resolution")*, 30 November 1992.

Council of the European Union (2006) *Council Directive 2005/85/EC of 1 December 2005 on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*, 2 January 2006, OJ L 326; 13 December 2005.

Council of the European Union (2013a) *Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)*, 29 June 2013, OJ L. 180/31-180/59; 29.6.2013, (EU) No 604/2013, ("Dublin Regulation").

Council of the European Union (2013b) *Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast)*, 29 June 2013,OJ L. 180/60 -180/95; 29.6.2013, 2013/32/EU.

Council of the European Union (2017) *Note from the Precidency on 'Migration: state of play and next steps – Exchange of views'* [Online]. Available from: http://www.statewatch.org/news/2017/sep/eu-council-migration-11836-17.pdf [Accessed 10 November 2017]

Dutch State Secretary for Security and Justice and the Minister for Foreign Trade and Development Cooperation (2015) *Letter of 8 September 2015 from the State Secretary for Security and Justice and the Minister for Foreign Trade and Development Cooperation to the House of Representatives on the European asylum issue.* [Online]. Available from: https://www.scribd.com/document/284732070/Letter-Migration-the-Netherlands-8-September-2015-En [Accessed 3 November 2017]

Ekathimerini (2017) *Greek appeals committee halts deportation of Syrian, ruling Turkey 'unsafe' 20 May 2017.* [Online]. Available from: http://www.ekathimerini.com/208850/article/ekathimerini/news/greek-appeals-committee-halts-deportation-of-syrian-ruling-turkey-unsafe [Accessed 10 November 2017]

European Asylum Support Office (2015) *EASO - The Implementation of Article 15(c) QD in EU Member States*.

European Asylum Support Office (2016) *An Introduction to the Common European Asylum System for Courts and Tribunals: A Judicial Analysis*.

European Commission (2000) *Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status*, 20 September 2000, COM (2000) 578 final.

European Commission (2009) *Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast)*, 21 October 2009, COM (2009) 554 final; 2009/0165 (COD).

European Commission (2010) *Report on the Application of the Directive 2005/85/EC*, COM (2010)465, 8 September 2010

European Commission (2011a) *Communication: Review of the "Small Business Act" for Europe*, (COM (2011) 78 final).

European Commission (2011b) *Amended proposal for a Directive of the European Parliament and the Council on common procedures for granting and withdrawing international protection status (Recast)*, 1 June 2011, COM (2011) 319 final.

European Commission (2016a) *COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL on the State of Play of Implementation of the Priority Actions under the European Agenda on Migration* 10.2.2016.

European Commission (2016b) *Communication from the Commission to the European Parliament, the European Council and the Council Next Operational Steps in Eu-Turkey Cooperation in the Field of Migration* COM (2016) 166 final.

European Commission (2016c) *First Report on the progress made in the implementation of the EU-Turkey Statement,* 20.4.2016 COM (2016) 231 final.

European Commission (2016d) *Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Asylum and repealing Regulation (EU) No 439/2010*, 4.5.2016 COM (2016) 271 final.

European Commission (2016e) *Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast)* 4.5.2016 COM (2016) 270 final

European Commission (2016f) *Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU*, 13.7.2016, COM (2016) 467 final.

European Commission (2017), *Sixth Report on the Progress made in the implementation of the EU-Turkey Statement,* 13.6.2017 COM (2017) 323 final.

European Commission (2017), *Seventh Report on the Progress made in the implementation of the EU-Turkey Statement,* COM (2017) 470 final.

European Commission Director-General for Migration and Home Affairs to the Greek Secretary General for Migration (2016). *Letter of 5 May 2016 by the European Commission Director-General for Migration and Home Affairs to the Greek Secretary General for Migration.* (2016) [Online]. Available from: at http://asylo.gov.gr/wp-content/uploads/2016/10/scan-file-mme.pdf [Accessed 10 November 2017]

European Commissioner for Migration and Home Affairs (2016). *Letter of 29 July 2016 by the European Commissioner for Migration and Home Affairs to the Greek Minister for Migration Policy*. (2016) [Online]. Available from: at http://asylo.gov.gr/wp-content/uploads/2016/10/scan-file-mme.pdf [Accessed 10 November 2017]

European Council on Refugees and Exiles (ECRE) (1995) *"Safe Third Countries": Myths and Realities*.

European Council on Refugees and Exiles (ECRE) (2016a) *Admissibility, responsibility and safety in European asylum procedures*.

European Council on Refugees and Exiles (ECRE) (2016b) *Comments on the Commission Proposal for an Asylum Procedures Regulation COM (2016) 467* November 2016.

European Council on Refugees and Exiles (ECRE) (2017) *Debunking the "Safe Third Country" myth*, Policy Note #8 November 2017.

European Database of Asylum Law (EDAL) (2016a) *Netherlands - Court of The Hague, 23 November 2016, AWB 16/22612* [Online]. Available from: http://www.asylumlawdatabase.eu/en/case-law/netherlands-court-hague-23-november-2016-awb-1622612 [Accessed 10 November 2017]

European Database of Asylum Law (EDAL) (2016b) *Greece: The Appeals Committee issues decisions on Turkey as a Safe Third Country* [Online]. Available from: http://www.asylumlawdatabase.eu/en/content/greece-appeals-committee-issues-decisions-turkey-safe-third-country [Accessed 10 November 2017]

European Migration Network (EMN) (2014) *Ad-Hoc Query on safe countries of origin and safe third countries Compilation* 22nd December 2014

European Parliament (2017a) *Briefing EU Legislation in Progress Common procedure for asylum* European Parliamentary Research Service (EPRS) 29 March 2017.

European Parliament (2017b) Committee on Civil Liberties, Justice and Home Affairs, Amendments 1348 - 1596 *Draft report Laura Ferrara (PE597.506v01-00) Common procedure for international protection in the Union*, Proposal for a regulation (COM(2016)0467 – C8-0321/2016 – 2016/0224(COD)). http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=&reference=2016/0224(COD)

European Union (2012) *Charter of Fundamental Rights of the European Union* 26 October 2012, 2012/C 326/02.

Garlick, Madeline (2015). *The Potential and Pitfalls of Extraterritorial Processing of Asylum Claims*, Migration Policy Institute.

Gil-Bazo, María-Teresa (2006). *Refugee status, subsidiary protection, and the right to be granted asylum under EC law*, Research Paper No. 136, Refugees Studies Centre.

Greece (2016) *Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC*, 3 April 2016.

Greek Asylum Service (2017) *Four years since the Asylum Service became operational* Available [Online]. Available from: http://asylo.gov.gr/en/wp-content/uploads/2017/06/Press_release-4-years-HAS_ENG1.pdf [Accessed 10 November 2017]

Hofmann, Martin (2016) *The emergence of a new foreign migration policy in Europe-Vienna Migration Conference,* ICMPD Working Paper 11.

Intergovernmental Consultations on migration, asylum and refugees (IGC) (2017a) *Compilation Asylum and Refugees Working Group Meeting 21-22 March 2017.*

Intergovernmental Consultations on migration, asylum and refugees IGC (2017b) *Compilation Application of the Safe Third Country Concept, Request for information from Norway.*

Kassam, A. (2017) *Activists challenge 'unsafe' US-Canada pact that prompts refugees to flee by foot*. [Online]. The Guardian, 6 July 2017. Available from: https://www.theguardian.com/world/2017/jul/06/canada-us-refugees-safe-third-country-agreement-border-crossing [Accessed 10 November 2017]

Kurier (2016) *De Maiziere für Rückführung nach Afrika.* 7 July 2016 [Online]. Available from: https://kurier.at/politik/ausland/de-maiziere-unterstuetzt-oesterreich-vorschlag-zu-rueckfuehrung-von-fluechtlingen-nach-afrika/208.431.715 [Accessed 10 November 2017]

La Libre. (2017) *La Chambre adopte la réforme du droit d'asile: Les policiers vont pouvoir fouiller dans les téléphones et sur les réseaux sociaux des migrants.* 9 November 2017 [Online]. Available from: http://www.lalibre.be/actu/politique-belge/la-chambre-adopte-la-reforme-du-droit-d-asile-les-policiers-vont-pouvoir-fouiller-dans-les-telephones-et-sur-les-reseaux-sociaux-des-migrants-5a04c2b9cd707514e8a9fd1d [Accessed 10 November 2017]

Levitz, S. (2017) *Number of people seeking asylum in Canada at levels not seen since 2009.* [Online]. National Post, 19 September 2017. Available from: http://nationalpost.com/news/canada/full-scope-of-asylum-seeker-arrivals-in-august-expected-to-be-released-today [Accessed 10 November 2017]

Library of Congress (2017) *Refugee Law and Policy* [Online]. Available from: https://www.loc.gov/law/help/refugee-law/australia.php#_ftn15 [Accessed 10 November 2017]

Moreno-Lax, V. (2015). *The Legality of the "Safe Third Country" Notion Contested: Insights from the Law of Treaties*, in G.S. Goodwin-Gill and P. Weckel (eds), Migration & Refugee Protection in the 21st Century: Legal Aspects - The Hague Academy of International Law Centre for Research (Martinus Nijhoff) 665-721.

Norwegian Directorate of Immigration (2015) *Faktaskriv 2015* [Online]. Available from: https://www.udi.no/statistikk-og-analyse/arsrapporter/tall-og-fakta-2015/faktaskriv-2015/hvor-mange-sokte-om-beskyttelse/ [Accessed 10 November 2017]

Norwegian Directorate of Immigration (2017) *UDIs høringssvar - Evaluering og videreføring av midlertidige endringer i utlendingsloven vedtatt på bakgrunn av Prop.16 L (2015-2016).*

Norwegian Immigration Appeals Board (2016a) *Nemndmøter i Storskog-saker* [Online]. Available from: https://www.une.no/aktuelt/arkiv/2016/nemndmoter-i-storskog-saker/ [Accessed 10 November 2017]

Norwegian Immigration Appeals Board (2016b) *Stornemnd: Retur til Russland* [Online]. Available from: https://www.une.no/kildesamling/stornemndavgjorelser/stornemnd-retur-til-russland/ [Accessed 10 November 2017]

Norwegian Ministry of Justice and Public Security (2015a) *GI-12/2015: Asylsøknader fra personer som har reist inn i Norge fra Russland – behandling og prioritering.*

Norwegian Ministry of Justice and Public Security (2015b) *Prop. 16 L (2015–2016) Endringer i utlendingsloven (innstramninger).*

Norwegian Ministry of Justice and Public Security (2015c) *GI-13/2015: Rask saksbehandling for asylsøkere som har hatt opphold i Russland, jf. utlendingsloven §§ 32 og 90.*

Norwegian Ministry of Justice and Public Security (2015d) *Instruks – Rutiner for rask håndtering av personer som ankommer over norskrussisk landegrense (Storskog) uten gyldig visum eller annen gyldig innreisetillatelse til Norge*.

Norwegian Ministry of Justice and Public Security (2015e) Press release 98, [Online] Available from: https://www.regjeringen.no/en/aktuelt/the-government-announces-a-stricter-asylum-policy/id2459708/ [Accessed 28 October 2017].

Norwegian Ministry of Justice and Public Security (2016a) *GI-07/2016: Storskogporteføljen – behandling av asylsøknader fremsatt i 2015 fra personer med visum til Russland som var gyldig for én innreise (engangsvisum).*

Norwegian Ministry of Justice and Public Security (2016b) *GI-08/2016: Storskogporteføljen, tilbakemelding på praksisforeleggelse.*

Norwegian *Ministry of Justice and Public Security, (2016c) GI-15/2016: Storskogporteføljen – behandling av asylsøknader fremsatt i 2015 fra personer som har flerreisevisum eller oppholdstillatelse i Russland som er utløpt i tid.*

Norwegian Ministry of Justice and Public Security (2017) *Prop. 149 L (2016–2017) Endringer i utlendingsloven mv. (videreføring av innstramninger mv.)*

Norway (2008) *Immigration Act 2008*.

People's Party for Freedom and Democracy (VVD), Christian Democratic Alliance (CDA), Democrats '66 (D66) and Christian Union (CU), (2017) *Confidence in the Future, 2017–2021 Coalition Agreement.*

Refugee Support Aegan (2017) *The European Court of Human Rights communicated the case of B.J. (v. Greece) and has addressed the Greek government with specific questions* [Online]. Available from: http://rsaegean.org/the-european-court-of-human-rights-communicated-the-case-of-b-j-v-greece-and-has-addressed-the-greek-government-with-specific-questions/ [Accessed 10 November 2017]

Shalal, A. (2016) *German ministry wants to return asylum seekers to Africa*. [Online]. Independent, 6 November 2016. Available from: http://www.independent.co.uk/news/world/europe/german-ministry-refugee-migrants-asylum-seekers-africa-libya-tunisia-egypt-australia-a7400681.html [Accessed 10 November 2017]

Statewatch. (2017) *France-Germany Note: Full-text* (February 2017) [Online]. Available from: http://www.statewatch.org/news/2017/feb/eu-refugees-france-germany-note-feb-17.pdf [Accessed 10 November 2017]

The Economist (2015) *Dutch asylum policy, Bed, bath, and begone*. 23 April 2015 [Online]. Available from: https://www.economist.com/news/europe/21649614-netherlands-stumped-rejected-asylum-seekers-who-refuse-leave-bed-bath-and-begone [Accessed 10 November 2017]

The Netherlands (2000) *Vreemdelingenwet 2000*.

The Netherlands (2000) *Vreemdelingenbesluit 2000*.

The Netherlands (2000) *Vreemdelingencirculaire 2000*.

Turkish Ambassador to the EU (2016a). *Letter of 12 April 2016 by the Turkish Ambassador to the EU to the European Commission Director-General for Migration and Home Affairs*. (2016) [Online]. Available from: http://asylo.gov.gr/wp-content/uploads/2016/10/scan-file-mme.pdf [Accessed 10 November 2017]

Turkish Ambassador to the EU (2016b). *Letter of 24 April 2016 by the Turkish Ambassador to the EU to the European Commission Director-General for Migration and Home Affairs*. (2016) [Online]. Available from: at http://asylo.gov.gr/wp-content/uploads/2016/10/scan-file-mme.pdf [Accessed 10 November 2017]

UN General Assembly (1951) *Convention Relating to the Status of Refugees*, 28 July 1951, United Nations, Treaty Series, vol. 189

UN General Assembly (2016) *New York Declaration for Refugees and Migrants: resolution / adopted by the General Assembly*, 3 October 2016, A/RES/71/1,

UNHCR (1979). UNHCR Executive Committee Conclusion No. 15 (XXX) 'Refugees Without an Asylum Country' para (h)(iv).

UNHCR (1989) *Conclusion No. 58 (XL) on problems of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection adopted by the UNHCR Executive Committee at its 40th session*

UNHCR (1996) *Considerations on the "Safe Third Country" Concept*.

UNHCR (2001) *Global Consultations on International Protection/Third Track: Access to Procedures - 'Safe Third Countries', 'Safe Countries of Origin' and 'Time Limits'*, 1 June 2001

UNHCR (2003) *Secondary Refugee Movements and the Return of Asylum Seekers to Third Countries: The Meaning of Effective Protection*, February 2003, PPLA/2003/01.

UNHCR (2005a) *UNHCR Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status (Council Document 14203/04, Asile 64, of 9 November 2004).*

UNHCR (2005b) *Summary of UNHCR's Provisional Observations on the Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status*.

UNHCR (2010a) *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Detailed Research on Key Asylum Procedures Directive Provisions*.

UNHCR (2010b) *UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (COM (2009)554, 21 October 2009).*

UNHCR (2011) *UNHCR comments on the European Commission's Amended Proposal for a Directive of the European Parliament and of the Council on common procedures for granting and withdrawing international protection status (Recast) COM (2011) 319 final*

UNHCR (2013) *Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers*.

UNHCR (2016a) *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*.

UNHCR (2016b) *Better Protecting Refugees in the EU and Globally: UNHCR's proposals to rebuild trust through better management, partnership and solidarity*.

University of Michigan Law School, (2007) *The Michigan Guidelines on Protection Elsewhere*

Volkskrant (2016) *'The Dutch side of the Deal – Reconstruction'* [Online]. Available from: http://www.esiweb.org/rumeliobserver/2016/05/07/volkskrant-the-dutch-side-of-the-deal-reconstruction/ [Online].

Ward, Kim (2004). *Regional protection zones and transit processing centres*, ICAR Navigation guide.

YouTube (2015), *Geert Wilders Parliamentary debate on the Hijra into Europe* [Online]. Available from: https://www.youtube.com/watch?v=YQziOJktZlU[Accessed 10 November 2017]

Zilio, M. (2017) *Number of asylum seekers entering Canada through unauthorized border crossings drops in September.* [Online]. The Globe and Mail, 28 September 2017 Available from: https://beta.theglobeandmail.com/news/politics/number-of-asylum-seekers-entering-canada-through-unauthorized-border-crossings-drops-in-september/article36430561/?ref=http://www.theglobeandmail.com& [Accessed 10 November 2017]

Court cases

C-133/06, *European Parliament v. Council of the European Union* (2008) European Union: Court of Justice of the European Union, 6 May 2008.

C-695/15 PPU *Shiraz Baig Mirza v Bevándorlási és Állampolgársági Hivatal Mirza* (2016), European Union: Court of Justice of the European Union 17.3.2016.

Dutch Council of State (2016) 201603036/3/V2, 20 juli 2016

Greek 9th Appeals Committee (2017) Decision 15602/2017.

Greek 11th Appeals Committee (2017) Decision 14011/2017.

Greek Council of State Decision (2017) No 2347/2017 and 2348/2017, 22 September 2017. [Online]. Available from: http://www.asylumlawdatabase.eu/sites/www.asylumlawdatabase.eu/files/aldfiles/ΟΛ%20ΣΤΕ%202347_2017%20D.M..pdf [Accessed 10 November 2017]

Oslo District Court (2015). *15-194898TVI-OBYF: Kjennelse fra Oslo Byfogdembete av 22.12.2015*

Rechtbank Zeeland-West-Brabant (2013), 06-05-2013, AWB 13/10439 en 13/10437, ECLI:NL:RBZWB:2013:3183

Rechtbank Den Haag, (2013a) AWB 12 / 24812, ECLI:NL:RBDHA:2013:CA3244,10-06-2013.

Rechtbank Den Haag, (2013b) 14/9778 ECLI:NL:RBDHA:2015:399,15-01-2015.

Rechtbank Den Haag, (2016a), NL16.59, ECLI:NL:RBDHA:2016:3720, 07-04-2016.

Rechtbank Den Haag, (2016b), AWB 16/10406, ECLI:NL:RBDHA:2016:6624, 13-06-2016.

Rechtbank Den Haag, (2016c), AWB 16/27150, ECLI:NL:RBDHA:2016:15083, 09-12-2016.

Rechtbank Den Haag, (2016d) AWB 16/12222, ECLI:NL:RBDHA:2016:11593, 05-08-2016.

Rechtbank Den Haag, (2017a) AWB - 16 _ 29328, ECLI:NL:RBDHA:2017:465, 19-01-2017.

Rechtbank Den Haag, (2017b) Nl16.8340, ECLI:NL:RBDHA:2017:489, 20-01-2017.

Rechtbank Den Haag, (2017c) AWB 17/6220, ECLI:NL:RBDHA:2017:4269, 13-04-2017.

Rechtbank Den Haag, (2017d) AWB - 17 _ 8535, ECLI:NL:RBDHA:2017:5314, 17-05-2017.

Rechtbank Den Haag, (2017e) NL17.3187, ECLI:NL:RBDHA:2017:7232, 03-07-2017.

Rechtbank Den Haag, (2017f) NL17.3722, ECLI:NL:RBDHA:2017:8117, 18-07-2017.

Rechtbank Den Haag, (2017g) NL17.6539, ECLI:NL:RBDHA:2017:9754, 28-08-2017.

Swiss Asylum Appeals Commission (2000) Decisions EMARK 2000/10.

Swiss Asylum Appeals Commission (2001) Decisions 2001/14.

Annex I. Questions asked Norwegian authorities

1. Bakgrunnen for lovendringen i § 32 første ledd d) og Prop. 16 L (2015-2016) 13. november 2015.
   a) Hva var formålet med endringen?
   b) Betydde Storskog at man satte i gang en grenseprosedyre, eller kom ikke denne hjemmelen for grenseprosedyre før i innstrammingene foreslått i april 2016?
   c) Bruk av begrepet trygge tredje land.

2. Tolkning av bestemmelsen
   a. Kun en kjennelse fra Oslo Byfogdembete (OBE), andre saker i rettsinstansene?
   b. Ordlyden ”hatt opphold” tolkes av staten som ”et hvert opphold vil være tilstrekkelig, dog med unntak av ren transitt” OBE side 9. OBE enige transitt holder ikke, men ute av flyplassen, ute av transitt.
   c. Sier staten og OBE også at det er irrelevant for avvisningsvurderingen om Russland faktisk vil motta personen, dvs skal ikke vurderes som et krav, kun som et effektueringsteknisk hensyn?
   d. Opphold i en stat **eller et område**, betyr det at Norge er villige til å fronte at en del av et land holder?
   e. Krav om direkte innreise, jf NOU 2004?

3. Statistikk; Antall saker over Storskog, avslag, returer, Dublin saker?
4. Bakgrunnen for Prop 90 L (2015-2016) § 9.
5. Brukes trygge tredjeland bestemmelsen på andre saker, prøves den på andre land?
6. Har det vært et uttalt politisk ønske å bruke konseptet i større grad?
7. Hvilke erfaringer sitter man igjen med etter bruk av trygge tredjeland konseptet i Storskog sakene? Noen spesielle suksesser/utfordringer? Noen tanker om hvordan konseptet kan brukes i fremtiden for bedre migrasjonshåndtering?

Annex II. Questions asked Dutch authorities

1. How do Dutch authorities work with “safe third country” cases in practice? How are the cases identified in the first place? Who initiates/decides that a “new” country for the first time can be defined as safe?
2. The role of the courts in developing practice in these cases and the role of the Council of State.
3. Is there an outspoken political will in NLD to use the concept more extensively? Cf the role of Rutte-Samsom in the EU-Turkey statement http://www.esiweb.org/rumeliobserver/2016/05/07/volkskrant-the-dutch-side-of-the-deal-reconstruction/
4. Does the Netherlands have any clear positions when it comes to the current revision of the APD and the safe third country concept?

- Any position on the proposal to develop common lists of safe third countries
- Any position on the proposed threshold – connection/link
- Any proposal on the proposed threshold – “according to the Geneva Convention”

5. What kind of lessons can be drawn from how the Netherlands has applied the concept? Any specific successes/challenges applying the concept? Any thoughts on how the concept could be evolved in the future to secure better migration management?

Annex III. Questions asked Greek authorities

1. Role and responsibilities of the Greek experts interviewed
2. The process of defining and applying an admissibility procedure after the EU-Turkey statement.
    a. Was AS aware of the content of the EU-Turkey statement before the 18. March 2016. Did you have time to prepare?
    b. How did AS work to get in place an admissibility procedure? Cooperation with the EU? Cooperation with EASO?
    c. What were the responsibilities within the AS and the responsibilities within the Ministries? Was there a clear political view on how to establish and implement the admissibility procedure? Do the Ministry have instruction authority over the AS? Did the Ministry/ies give any instruction to the AS.
    d. What kind of lessons can be drawn from the process of establishing an admissibility procedure? Any specific successes/challenges?
3. What has been EASOs role in establishing and implementing the admissibility procedure? Any particular successes/challenges in working closely with an EU agency.
4. Did the AS consider the legal framework to be clear and easy to apply?
    a. If not, what was the main challenges? How were the challenges solved? If not solved yet, any opinion on how these challenges could be solved?
5. Has there been cases where Turkey reject to admit a person? At which point? What is done then?
6. Vulnerable are taken out of the procedure. Which groups are defined as vulnerable now. Persons with family in other EU countries taken out of procedure.
7. Does Greece have any clear positions when it comes to the current revision of the PD and the safe third country concept? Are you familiar with the recast, how will this affect Greece practice? Will the Is there an outspoken political will to use the concept more extensively?

8. Potential questions related to the statistics on the admissibility procedure/Reports on the progress made in the implementation of the EU-Turkey Statement.
9. What kind of lessons can be drawn from how Greece has applied the concept? Any specific successes/challenges applying the concept? Any thoughts on how the concept could be evolved in the future to secure better migration management? From your experience, do you think the EU-Turkey statement could be a blueprint for other agreements?

Annex IV. Questions asked representative from EASO in Greece

1. What has been EASOs role in establishing and implementing the admissibility procedure? Any particular successes/challenges in working closely with a MS.
2. Do EASO in Greece work towards the Migration Ministry or the Asylum Service?
3. Does EASO have any specific activities on safe third countries, quality framework?
4. Blueprint for other agreements?
5. EASOs role in future?

IGC MS	Provisions of safe third country in national law	Bound by APD	Safe third country ground for inadmissibility cf APD[1]	Linked to accelerated procedure	Use provisions of safe third country in practice, for countries outside DUB	National lists (N)/ Designated countries (D)	Relevant national case law
Australia	√[2]				√	√ (D)	√[3]
Belgium	√ [4]				x	x	
Canada	√[5]				√	√ (D)	√[6]
Denmark	√[7]				x	x	
Finland	√[8]		√		√	x	√[9]
Germany	√[10]		√		x	√[11] (N)	√[12]
Greece	√[13]		√		√	x	√[14]
Ireland	x[15]	2005	x		x	x	
Netherlands	√[16]		√		√	x	√[17]
New Zealand	x				x	x	
Norway	√				√	x	√[18]
Spain	√[19]		√		x	x	
Sweden	√[20]		x		√	x	√[21]
Switzerland	√[22]				x	√[23](N)	√[24]
United Kingdom	√[25]	2005	√	√	√	√[26] (N)	√[27]
United States of America	√				√	√ (D)	

[1] ECRE (2016a)

[2] Australia Migration Act section 91 D, Available from: http://www.austlii.edu.au/cgi-bin/viewdoc/au/legis/cth/consol_act/ma1958118/s91d.html

[3] Moreno-Lax (2015)

[4] Belgium New legislative proposal 23.7.2017, Doc 54 2548/001. Adopted 9.11.17. Available from: http://www.lachambre.be/

[5] The Canada-United States Safe Third Country Agreement 2004, Immigration and Refugee Protecion Act paragraph 101-102, cf Regulation 159.3 Available from: http://laws.justice.gc.ca/eng/acts/i-2.5/page-19.html#docCont

[6] Previous cases before the Federal Court of Appeal, available from:
http://www.refworld.org/topic,50ffbce40,50ffbce46f,,0,CAN_FCA,,.html
Press release 5.7.2017, Legal challenge of Safe Third Country Agreement launched, Available from: http://ccrweb.ca/en/media/legal-challenge-safe-third-country

[7] Denmark Udlændingeloven §7 stk 4, cf § 48a Available from: https://danskelove.dk/udlændingeloven

[8] Finland Utlänningslagen §99 a, Amended 6. Mars 2015 194/205, Available from: http://www.finlex.fi/sv/laki/alkup/2015/20150194

[9] Cases assessed by the Administrative Court of Helsinki regarding Russia as a First Country of Asylum, (IGC 2017a).

[10] Germany Asylum Act Section 26a, Available from: https://www.gesetze-im-internet.de/englisch_asylvfg/ cf. Basic law 16a Available from: https://www.gesetze-im-internet.de/englisch_gg/

[11] EU Member States, Norway and Switzerland.

[12] Federal Constitutional Court, Decision of 14 May 1996, 2 BvR 1938/93, 2 BvR 2315/93, BVerfGE 94, 49 (189)
Cases brought before the CJEU, C-517/17, C-540/17, C-541/17. Available from:
http://www.minbuza.nl/binaries/content/assets/ecer/ecer/import/hof_van_justitie/nieuwe_hofzaken_inclusief_verwijzingsuitspraak/2017/c-zakennummers/c-517-17-verwijzingsbeschikking_redacted.pdf

[13] Greece Article 56(1) L 4375/2016, Fast- Track Border Procedure under Article 60(4) L 4375/2016 Greece Law 4375/2016 *Greece: Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC* [Greece], 3 April 2016, available at:
http://www.refworld.org/docid/573ad4cb4.html

[14] See report.

[15] Ireland International Protection Act 2015, art 21, cf. Art 33, cf Art 72, Available from: http://www.irishstatutebook.ie/eli/2015/act/66/enacted/en/html

[16] Netherlands Aliens Act Article 30a, first paragraph, Aliens Decree Article 3.106a, first paragraph,

Vreemdelingenwet 2000, Available from: http://wetten.overheid.nl/BWBR0011823/2017-07-01, Vreemdelingenbesluit 2000 Available from: http://wetten.overheid.nl/BWBR0011825/2017-07-01, Vreemdelingencirculaire 2000 C2 6.3

[17] See report.

[18] Oslo byfogdembete 22.12.15.

[19] Spain, Ley 12/2009, de 30 de octubre, reguladora del derecho de asilo y de la protección subsidiara BOE-A-2009-17242, Articulo 20 (1) d. Available from: https://www.boe.es/buscar/act.php?id=BOE-A-2009-17242

[20] Sweden, Utlänningslag (2005:716) Chapter 5, Section 1b(3) Available from: https://lagen.nu/2005:716#K5

[21] Migrationsöverdomstolens avgörande den 20 augusti 2015, (mål nr UM 3266-14).

[22] Switzerland, Asyl A Art. 6a (2)(b), jf 31a1SEM (Amended 14. Desember 2012, in force 1. February 2014. Available from: www.admin.ch/gov/en/start.html)

[23] EU Member States, Norway, Iceland and Lichtenstein.

[24] AIDA (2016a).

[25] UK Immigration Rules paragraph 345, Available from: https://www.gov.uk/guidance/immigration-rules/immigration-rules-part-11-asylum

[26] EU Member States, Norway, Iceland and Switzerland.

[27] *Ibrahimi and Abasi v Secretary of State for the Home Department* [2016] EWHC 2049 (Admin), paras 136- 137 and 176.