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NOTE

From:	Presidency
To:	Strategic Committee on Immigration, Frontiers and Asylum
Subject:	Towards a more effective implementation of the safe third country concept - Discussion paper

The safe third country concept (STCC) can contribute to the EU approach developed in recent years to address migratory pressures on Member States in close cooperation with third countries. It allows a Member State to consider an application as inadmissible based on the presumption that applicants for international protection can obtain protection in a third country and provided that certain conditions are met. This concept was introduced into EU asylum law in 2005, but its practical application, so far, has been very limited. Currently, the STCC is regulated by Article 38 of Directive 2013/32/EU¹ (APD). From 12 June 2026, the provisions of Regulation 2024/1348² (APR) will apply, partially reforming the existing rules. The revised rules could be further reinforced by a comprehensive review to be carried out by the European Commission by 12 June 2025.

¹ 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).

² Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU.

On 15 May 2024, 15 like-minded Member States³ called on the Commission to reassess the provisions of the Pact, with a view of allowing the transfer of asylum applicants for whom there is an alternative to obtain protection in a safe third country, and to propose a common EU list of safe third countries.

The discussion in the Council kicked off at COREPER level on 6 December 2024 and was continued at the Asylum Working Party on 5 February 2025. Meanwhile, on 27 January 2025, the Commission launched its informal consultations with the Member States in the context of the review of the STCC. The meeting at SCIFA level on 13 February 2025 should aim to provide additional valuable input to the Commission in determining the way forward.

The focus remains on removing or at least redefining the connection criterion. However, it is important to further reflect on the existing limitations and possibilities to effectively operationalise the concept through the external dimension of migration. This must be done in full compliance with European and international law and respect for fundamental rights, such as the principle of non-refoulement.

The overarching element defining a safe third country is the guarantee of ‘sustainability’ in the third country. Attention must be paid to the required level of protection, durable solutions as provided by international law, including the principles set out in the Geneva Convention, and the requirements of Articles 57 and 59 APR.

According to the APR, the safe third country status may be presumed to be fulfilled in case the Union concluded an agreement with a third country (pursuant to Article 218 TFEU⁴) and provided that migrants admitted under the agreement will be protected in accordance with international standards, and in full respect of the non-refoulement principle. For the operationalisation of the STCC, it will be crucial to ensure that all the criteria to designate a third country as safe are met, and that rules regarding cooperation and mutual obligations with partner countries are set. Therefore, concluding appropriate agreements for the purposes of the implementation of the STCC might be considered.

³ The Member States included: BG, CZ, DK, EE, EL, IT, CY, LV, LT, MT, NL, AT, PL, RO and FI.

⁴ For more information on possible agreements covered by this provision, see Article 218 (6) TFEU that determines the procedure for concluding agreements between the Union and third countries or international organisations.

In this context, it is important to ensure that third countries strengthen their asylum systems and provide access to international protection. This also includes the strengthening of their legal framework and administrative capacity, to ensure adequate conditions for processing asylum claims, as well as addressing the situation of those who will not qualify for protection in a safe third country. Since the STCC's practical implementation has been limited so far, it is important to gain further experience in this area and, therefore, consider implementing pilot projects. Cooperation on the grounds of resettlement and humanitarian admission, could contribute to strengthening partnerships between the EU and third countries, especially since the new Regulation 1350/2024⁵ highlights their strategic dimension.

It should be emphasised that the APR introduced the possibility of creating an EU list of safe third countries, based on a Commission proposal and requiring co-decision, without prejudice to lists adopted at national level. However, consideration should be given to the relative merits of developing such EU lists, in particular with regards to effects on the third country in question and the impact on the national lists. In addition, the APR allows for the exclusion of a part of the territory of a third country or a specific category of persons from this designation. To assess the possibility of adding a third country to the list, information from the Member States, EUAA, EEAS, UNHCR, the Council of Europe and other relevant international organisations should be considered. Member States may also propose to include selected third countries in the EU list. The EUAA, at the request of the Commission, shall provide information and analysis in this regard and, at a later stage, assist the Commission in reviewing the situation in third countries designated as safe. If circumstances change, and the third country no longer meets the criteria, its presence on the EU list shall be suspended. To this end, regular and ad-hoc reviews of the situation in the designated third countries would be required to ensure that the rights of asylum seekers are not at risk.

⁵ Regulation (EU) 2024/1350 of the European Parliament and of the Council of 14 May 2024 establishing a Union Resettlement and Humanitarian Admission Framework and amending Regulation (EU) 2021/1147.

According to the EUAA report from 2022, only a few of the EU+ countries have adopted a national safe third countries list⁶. The lists include, among others, the Western Balkan countries, Georgia, Türkiye, Armenia, Australia, USA, Canada, and New Zealand. Territorial and personal exemptions were also applied⁷.

Notwithstanding the above, the provisions of the APR require that each applicant is assessed individually, while particular attention must be paid to vulnerable groups, including unaccompanied minors. The assessment must provide reasons why the third country will or won't be able to guarantee the required level of safety for the applicant in question.

The current connection criterion that is part of this individualised assessment, by its nature, may significantly narrow the scope of potential partner countries for handling asylum requests, as it may have the effect of limiting them mainly to those along migratory routes in the EU's proximity. Cooperation with these partner countries may result in secondary movements towards the EU as a consequence of a negative decision in a third country. At the same time, any attempts to define the connection criterion, at national or Union level, will continue to be subject to the jurisdiction of national and EU courts. This could hamper the STCC's full potential in case of a restrictive interpretation of the connection criterion.

Finally, to actually enforce the transfer of an applicant to a safe third country, it is necessary to remove the existing restrictions in the definition of return. Currently, the Return Directive 2008/115/EC limits the scope of destination to a) the country of origin, b) the transit countries, in accordance with (readmission) agreements, or c) third countries where the person concerned decides to voluntarily return and in which they will be accepted. It is important that the new return legislation allows for innovative solutions to be effectively implemented.

⁶ EE, DE, EL, HU, IE and CH.

⁷ EUAA (2022) 'Applying the concept of safe countries in the asylum procedure', https://euaa.europa.eu/sites/default/files/publications/2022-12/2022_safe_country_concept_asylum_procedure_EN.pdf

Taking into account the above considerations, the Presidency invites delegations to answer the following questions:

- *Do you think that adopting an EU list on safe third countries can facilitate the effective implementation of the safe third country concept? Could this concept be mandatory considering that such a list will be adopted?*
 - *Given that the implementation of the safe third country concept will require our engagement in the external dimension, what strategies should we use to approach third countries?*
 - *Do you see a need to continue the discussion on potential pilot projects in third countries? If so, in which forum should this discussion take place?*
 - *Do you agree that the improvement of the safe third country concept should go hand in hand with amending the definition of return?*
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