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From: To:	General Secretariat of the Council Delegations
N° Cion doc.:	ST 8635 2025 ADD 1 + ST 8635 2025 INIT
Subject:	Proposal on the Presidency's compromise text regarding the Commission's proposal on the application of the safe third country concept (STC proposal) - compilation of comments of delegations

ANNEX

Written comments submitted by the Member States

Regulation of the European Parliament and of the Council

- **- compilation of comments of delegations written contributions regarding on the Presidency's compromise text regarding on the Commission's proposal as regards the application of the safe third country concept (STC proposal)?**

(follow up 10.06.2025 AWP) –

CONTENTS

AUSTRIA

Commission proposal as regards the application of the safe third country concept (STC proposal)

Austria has been advocating for a strengthening of the safe third country concept for many years. Therefore, the efforts of the Commission are welcomed to improve the legal basis and make the concept work in practice.

In this regard Austria had always called for the connection criterion to be deleted without replacement in order to fully exploit the concept's potential. Austria upholds this position and requests the deletion of the connection criterion.

Only a complete deletion based on the guarantees already provided for in Article 59 of the APR can lead to the successful application of the safe third country concept in the long term. However, the proposed replacement of the criterion by several options is seen as a step in the right direction.

Furthermore, it is positive that, even in cases of inadmissibility decisions based on the safe third country concept, a suspensive effect is no longer foreseen in the APR.

Regardless of the existing desire to delete the connection criterion without replacement, Austria has no specific comments on Article 59(5)(b)(i) and (ii).

Regarding **Article 59(5)(b)(iii),**Austria would like to come up with the following questions and comments:

- What is the difference between an agreement and an arrangement, also in relation to the agreement under para7? What formal requirements are necessary?
- Austria requests to foresee as little formalities as possible to conclude an arrangement with third countries. Otherwise, the practical added value of the proposal would be limited.
- The obligation to inform the Commission and other Member States ahead of the conclusion of an agreement/arrangement should be deleted from the text, as it offers no added value. The planned “monitoring” raises many questions. As the "guardian of the treaties," the European Commission must always check compliance with secondary law anyway. In addition, the EUAA monitoring mechanism exists.
- The reference to the "examination on the merits" should be deleted, as Article 59(1)(d) is a prerequisite for the application of the concept anyway. Or how should the provision be understood?

Regarding **Article 68(3)(b)**

- The exception to the suspensive effect when applying the safe third country concept is highly welcomed.
- However, Austria would like to ask for clarification on the relationship between the suspensive effect under the APR and the proposed Return Regulation in these cases.
- In the explanation to the proposal, it was pointed out that an appeal against the APR inadmissibility decision no longer has suspensive effect but appeals against a return decision would always have suspensive effectin case of a "Refoulement" risk.
- In particular it does not seem to clear what exactly triggers a possible suspensive effect of the return decision. E.g. a claim by the applicant? An assessment of the authority? A court decision to grant suspensive effect?
- Austria would like to ask for a **written clarification by the Council Legal Service** due to the relevance of this issue.

CYPRUS

Comments by the Republic of Cyprus on the draft regulation (COM(2025) 259 final από 20.5.2025) amending regulation (EU) 2024/1348 on the application of the safe third country principle {SWD(2025) 600 final}

1. We welcome the Commission's proposal for amending Regulation's 2024/1348 provisions on STC.

2. As already expressed by various Member States in the AWP, the proposal that "Member States shall inform the Commission and the other Member States prior to concluding an agreement or arrangement as referred to in the first paragraph, point (b)(iii)" does not clarify when and how this information should be provided. We would suggest that the Commission be informed of the agreement towards the conclusion of the negotiations, and prior to its formal signing, to ensure that all terms are finalized and the full content of the agreement is clearly presented.

3. We are always in favour of taking into account the best interests of the child in cases of minors, especially in cases of unaccompanied minors (UAMs) applying for international protection. However, we consider the absolute prohibition for UAMs of condition (iii) might lead to abuse by young undocumented persons who would claim to be UAMs. Perhaps, a more restricted wording, such as: "Point (b)(iii) of the first paragraph shall not apply where the applicant is an unaccompanied minor, and his or her age is established by means of travel or other identity documents, or through an age assessment, provided that such means reliably establish that the applicant is a minor.", would provide greater legal clarity and ensure that the exception is applied only in cases where the applicant's status as a minor is clearly and credibly substantiated.

4. With regard to the suspensive effect of appeals against inadmissible decisions, we understand that legal remedies provided in Article 68(5)(a) apply, for the relevant return decisions, establishing a reasonable timeframe for lodging an appeal (at least 5 days). We would appreciate clarification as to whether Article 28 of the proposed Return Regulation will also apply in this context, particularly concerning the timeframe within which the court must decide on the suspensive effect of the appeal against the return decision.

5. We would appreciate clarification as to whether EU–third country (EU-TC) agreements will be applied in the context of the proposed element (iii) of Art. 59(5)(b). Should this not be envisaged, we would like to express our view that EU-TC agreements is a more effective means of implementation, since they offer a more coherent and streamlined framework, particularly from the perspective of third countries, as it allows for the conclusion of a single agreement rather than multiple bilateral arrangements. This would contribute to greater efficiency and legal clarity in the overall application of the concept. Thus, we would suggest a new wording, which will reflect this option.

FRANCE

Proposition de la Commission modifiant le règlement (UE) 2024/1348 (APR) en ce qui concerne l'application de la notion de "pays tiers sûrs"

- La France rappelle sa position constante sur la proposition de révision du concept de pays tiers sûr:

  1. Le cadre constitutionnel français interdit d'appliquer le concept de pays tiers sûr : la France a l'obligation d'examiner toute demande d'asile présentée sur son territoire.

  2. La France maintient son opposition, exprimée pendant les négociations sur le Pacte, à la suppression du lien de connexion. A ce titre, la France souligne que les évolutions que pourraient connaître les dispositions relatives au concept de pays tiers sûr ne doivent pas aboutir à une remise en cause des équilibres trouvés avec le Pacte, qui tiennent compte des enjeux de chacun. Par conséquent, la France ne peut pas accepter le point iii) permettant de ne pas appliquer le lien de connexion en cas d'accord ou arrangement avec un pays tiers sûr [article 1, point 1) de la proposition de révision].

  3. Par ailleurs, la France n'est pas favorable à la suppression de l'effet suspensif automatique du recours contre la décision d'irrecevabilité prise sur le fondement du concept de pays tiers sûr, proposée à l'article 1, point 2 de la proposition de révision, au vu des risques engendrés en cas d'annulation de la décision par la juridiction [L'Etat membre devrait réacheminer dans l'UE le demandeur éloigné dans un pays tiers.] La France propose plutôt de réduire les délais de recours.

- Nous serons particulièrement attentifs pendant les négociations à ce que les principes suivants soient respectés :

  - Éviter une application différenciée du concept qui génèrerait des mouvements secondaires entre Etats membres ;

  - Assurer le respect des droits fondamentaux des demandeurs d'asile concernés et des obligations internationales des Etats membres, en particulier la Convention de Genève.

GERMANY

Commission proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept

- On the European Level we support initiatives that lead to the deletion of the connection criterion to facilitate returns. We welcome the Commission's proposal, including the removal of the connection criterion as a mandatory requirement for classification as a safe third country. This proposal offers the Member States sufficient flexibility in applying the safe third country concept. Attention to the protection needs of vulnerable groups is important here as well. We therefore find it logical that Article 59 (5) (b) (iii) – that is, an agreement with a suitable third country – does not suffice in the case of unaccompanied foreign minors.
- We ask the Commission to provide further explanation of the planned addition of an Article 59 (5) (b) (iii): Do we understand correctly that this provision will make it possible to conduct asylum procedures in third countries with which an agreement/arrangement has been made? Does the Commission believe that the standard for agreements/arrangements to conduct asylum procedures in third countries differs from the standard for agreements/arrangements concerning return centres in third countries as referred to in Article 17 of the planned Return Regulation? If so, in what way do these standards differ?
- We thank the Commission for confirming our understanding that "agreements" are international treaties with binding effect, while "arrangements" with third countries remain below this threshold in formal terms.
- An agreement/arrangement with a third country that is willing to cooperate is usually necessary in practice. This legal requirement therefore seems logical to us. In our view, an international treaty increases the legal certainty of cooperation with a suitable third country. The Member States may consider this in the framework of the flexibility given to them.

- In general, we can understand the idea behind the requirement to inform the Commission and the other Member States before concluding an agreement or arrangement. We took note of the Commission's intention to not introduce a complicated procedure, which we appreciate. However, this provision still raises the following questions:
    - How far in advance of the conclusion of an agreement/arrangement with a third country must the Commission and the Member States be informed?
    - Which channel and what form are to be used to supply this information?

  Furthermore, there is a risk that supplying such information before an agreement/arrangement is concluded could have a negative impact on the negotiations with the third country. The intended purpose could be fulfilled by informing the Commission and the Member States immediately after an agreement/arrangement has been concluded.

- We welcome the Commission's proposal to drop the automatic suspensive effect of appeals against inadmissibility decisions. In general, we follow the Commission's analysis of the rulings of the European Court of Human Rights and the European Court of Justice concerning return decisions. As we understand it, the proposal would result in the same form of legal remedy for cases applying the safe third country concept as for Dublin cases.

  In our understanding, the applicant must have the possibility to have the enforcement of the measure suspended if they claim a risk of refoulement regardless of the type of court procedure. That is why we believe it is sufficient if a legal remedy against a return decision is possible in the form of expedited court proceedings (interim measures), and if a right to remain exists for the duration of these expedited proceedings. Under German law, the applicant has the possibility to request suspensive effect of the appeal in the main proceedings in an urgent procedure, hence the courts have the power to decide upon request about the applicant's right to remain in accordance with Article 68 (4) APR. The urgent procedure gives the applicant the opportunity to review the outcome of the individual assessment by the authority. In our view, this satisfies the requirements of the European Convention on Human Rights, provided that enforcement of the transfer to the third country is legally excluded within the time limit for filing the request and until a decision is taken on that request. By Article 68 (5) (d) APR it is legally guaranteed that the applicant will not be transferred to the third country within the time limit for filing the request or before any decision is made by the court, the applicant is also protected against a *fait accompli* to their detriment. In the urgent procedure, the applicant's arguments are also examined as part of a summary examination. We would be grateful to the Commission if it could confirm that we have understood this correctly.

- Further, it is necessary to ensure that the requirements of the Return Regulation are consistent with the requirements of the Asylum Procedure Regulation.

GREECE

Comments of Greece on the Safe Third Country Concept (doc - 8635/25)

We would like to recall our position that the **review of the Safe Third Country concept** should be ambitious in order to facilitate its full potential and its practical implementation. The proposal as presented in doc 8635/25 should be complemented by a proposal for **a European List** of Safe Third Countries, thus maximising further the potential of the concept.

The amendment of the Safe Third Country Concept as presented in doc **8635/25 art 59 (5) b** is a step in the right direction offering sufficient flexibility.

The removal of the mandatory requirement of connection is welcomed. However, the requirement for bilateral agreements or arrangements with third countries, taking into account the geographical position of Greece is deemed restrictive. The complexity of concluding bilateral agreements or arrangements in that context is emphasized and therefore, the option of of **EU agreements or arrangements** should also be foreseen.

Furthermore, we would like to recall our position already expressed in in the context of Return Regulation, valid also in the STC provisions of APR, in the process of negotiating agreements or arrangements for the readmission of TCN, **prior consultation with the Member State that has common borders with the third country is needed.**

Given the provision in **art 59 par**. 6 already foresees that STC concept in the cases of UAM's is applied **only** "*where it is not contrary to his or her best interests and where the authorities of Member States have first received from the authorities of the third country in question the assurance that the unaccompanied minor will be taken in charge by those authorities and that he or she will immediately have access to effective protection as defined in Article 57"* we deem the first subparagraph of point **(b)** redundant, and therefore we suggest deleting it .

We support the deletion of the automatic suspensive effect of the inadmissible applications on the grounds of the safe third country concept as proposed in the amendments of art 68 (3) by adding also the cases of Art 38 (1)b.

Below our drafting proposals :

Article 1

Regulation (EU) 2024/1348 is amended as follows:

(1) Article 59(5) is amended as follows:

(a) point (b) is replaced by the following:

‘(b) one of the following conditions is met:

i) there is a connection between the applicant and the third country concerned, on the basis of which it would be reasonable for him or her to go to that country;

ii) the applicant has transited through the third country concerned;

iii) there is an **EU or Member State (s)** agreement or an arrangement with the third country concerned requiring the examination of the merits of the requests for effective protection made by applicants subject to that agreement or arrangement.’ ‘

(b) the following two subparagraphs are added:

~~‘In the application of the first paragraph, point (b), the best interests of the child shall be a primary consideration. The first paragraph, point (b)(iii), shall not apply where the applicant is an unaccompanied minor.~~

Member States shall inform the Commission and the other Member States prior to concluding an agreement or arrangement as referred to in the first paragraph, point (b)(iii).**’ When the third country concerned has a common border with a Member State, the prior agreement of that Member State is required before starting negotiations on any such agreement or arrangement**

(2) In Article 68 (3), point (b) is replaced by the following:

‘(b) a decision which rejects an application as inadmissible pursuant to Article 38(1), point (a), (b), (d) or (e), or Article 38(2), except where the applicant is an unaccompanied minor subject to the border procedure.’

As a consequential change of the insertion proposed in point iii par 7 of art 59 should be modified as follows:

7. Where the Union and a third country have jointly come to an agreement pursuant to Article 218 TFEU **or an arrangement** that migrants admitted under that agreement will be protected in accordance with the relevant international standards and in full respect of the principle of non-refoulement, the conditions of this Article regarding safe third-country status may be presumed fulfilled without prejudice to paragraphs 5 and 6.

IRELAND

Observations on Safe Third Country Proposal – Ireland

26 June 2025

Ireland thanks the Commission for the proposal and offers the following observation.

Ireland welcomes the retention of the connection criterion, as provided for in the proposal, and acknowledges that the proposal represents a compromise in terms of the views of those Member States who wish to retain the connection criterion in its present form and those who do not wish it to apply at all.

THE NETHERLANDS

Commission proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept (COM(2025) 259)

NL welcomes the proposal and thanks the Commission for it. NL has not yet determined its final position, but the first impression is good.

NL supports the Commission on the point that the connection criterion should not be mandatory, as it is not required under international law. However, NL would have preferred to see the connection criterion removed entirely. This would also provide further simplification legally. Therefore, the proposal should also not be amended by adding further procedural or substantive requirements that could again complicate the application.

The proposal also provides that appeals are not granted automatic suspensive effect. NL agrees that this better reflects the nature of an inadmissibility procedure and also realises that this is preferred by several Member States. At the same time, though, NL notes that, in the Dutch system, this means that the asylum seeker must request the court to be allowed to await the appeal procedure in NL. This leads to an increase in the workload for the courts. This while the workload at our courts is already very high. For these reasons, NL believes that Member States should have the freedom to choose for themselves whether to grant automatic suspensive effect to the appeal. A 'may-provision' instead of a 'shall-provision would therefore help us.'

PORTUGAL

Below are the comments on the COM proposal for a legislative amendment to Regulation EU 2024/1348 on the application of the safe third country concept (Doc. 8635/25 + ADD 1).

With regard to Article 68(3)(b)

It is still too early to make a sustained assessment of the suspensive effect of appeals, whether automatic or at the request of the applicant himself by optional means. However, Have a Positive Approach to the Commission's proposal to incorporate Article 38(1)(b), both of the APR, into Article 68(3)(b).

With the amendment proposed by COM, it seems that the logic of accelerated border procedures will be more robust, and the applicant will always have the possibility of requesting the suspensive effect of their appeal from the judicial authorities.

With regard to Article 59(5), it seems that the proposal has made it possible to apply the concept of safe third country more widely. Points i) and ii) are fine for us and may even make the task of applying the concept easier. However, with regard to point iii), we would like to have further clarifications on what the difference is between agreements and arrangements. How can member states ensure that the third country has honoured its commitment not to undermine the principle of non-refoulment? Are there any sanctions?

ROMANIA

Commission proposal for a regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept (8635/25 + ADD 1)

In the context of the application of the new legislation on migration and asylum, we consider this legislative action to be very useful in view of the need for full application of the legal provisions regarding the concept of "safe third country". At the same time, in the interest of efficiency, we support the conclusion of agreements with third countries to ensure including the guarantee of the right to request international protection, which would be followed by a fair analysis, respecting all the procedural guarantees specific to this field.

SLOVAK REPUBLIC

Slovakia finds the proposed amendment to the Regulation (EU) 2024/1348 regarding the connection criterion to a safe third country and the appeal procedure as acceptable. While Slovakia had previously advocated for the complete removal of the connection criterion, we can now agree with the current formulation of the proposed amendment, as it provides sufficient flexibility for Member States.

SPAIN

In relation to the following item, please find Spanish position:

Concerning **COM proposal text on STC**, Spain presents a scrutiny reservation due to several reasons (e.g. no obligation of connexion criterion and related to it the nature, content and impact of agreements or arrangements). In addition to it, scrutiny reservation is also due to the negotiation evolution of Return proposal because it goes hand to with STC proposal.