

CM2518

MEIJERS COMMITTEE REVIEW OF THE SAFE THIRD COUNTRY CONCEPT UNDER THE EU ASYLUM PROCEDURE REGULATION

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With this comment, the Meijers Committee responds to the European Commission's proposed targeted amendments regarding both the connection criterion and the automatic suspensive effect of appeals in the context of the review of the "safe third country" concept under the Asylum Procedure Regulation (Regulation (EU) 2024/1348) (APR).

By placing this proposal against the backdrop of existing fundamental rights concerns arising from the safe third country concept under the APR, the Meijers Committee emphasises the cumulative impact on fundamental rights.



Standing committee of experts on international
immigration, refugee and criminal law

Review of the safe third country concept under the EU Asylum Procedure Regulation

1. Introduction

The EU is increasingly focusing on enhancing cooperation with third countries to manage irregular migration, with the concept of "safe third countries" playing a crucial role in reshaping the Common European Asylum System.¹ This concept, which transfers the responsibility of processing asylum applications to third countries, is built on the premise that applicants for international protection could have sought refuge in another country earlier in their journey. Initially outlined in Article 38(2) Asylum Procedures Directive (APD) and maintained in Article 59(5) of the new Asylum Procedures Regulation (APR) under the EU's Pact on Migration and Asylum, the "safe third country" concept allows EU Member States to declare asylum claims inadmissible without assessing their merits. As a result, applicants for international protection are transferred to third countries where they can receive 'effective protection'.

Pursuant to Article 77 APR, the European Commission is tasked with reviewing the application of the safe third country concept and has proposed targeted amendments concerning both the connection criterion and the automatic suspensive effect of appeals.² The targeted amendments aim to remove the mandatory nature of the connection criterion, which requires a reasonable connection between the applicant and the third country prior to transfer. Instead, Member States may also opt for a transit criterion and may apply the safe third country concept on the basis of an agreement or arrangement with a third country that provides for an examination of the merits of an application for effective protection. In addition, the targeted amendments seek to ensure that appeals against inadmissibility decisions no longer have automatic suspensive effect.³ This proposal arises in the context of broader procedural reforms introduced under the APR. These reforms raise serious concerns regarding fundamental rights, as the APR has already lowered the threshold for designating a third country as "safe", thereby increasing the risk of facilitating transfers under conditions that may not adequately safeguard those rights.

With this comment, the Meijers Committee addresses both the existing fundamental rights implications of the safe third country concept under the APR and the proposed amendments that would further weaken these safeguards. By considering these developments together, the Meijers Committee highlights the cumulative impact on fundamental rights. At the same time, we argue that removing safe third country safeguards risks producing opposite effects to those intended by the EU: instead of accelerating procedures, reducing pressure on domestic asylum systems, and achieving harmonization, it could ultimately undermine these very objectives. This is because lowered safeguards jeopardise durable solutions for refugees, which could result in secondary movements back to the EU.

Considering that Article 77 APR prescribes the review of the "safe third country" concept in general, allowing targeted amendments where appropriate, we use this opportunity to reflect on the Asylum Procedures Regulation's "safe third country" concept as a whole and propose recommendations in this regard. This comment is structured as follows: Section 2 addresses the fundamental rights implications of the "safe third country" concept under the APR and Section 3 examines the proposal to remove the mandatory nature of the connection criterion, as well as the proposal to remove the automatic suspensive effect of appeals against inadmissibility decisions based on the safe third country ground. Lastly, The Meijers Committee concludes with recommendations.

¹ European Commission, Letter by President Ursula von der Leyen to EU Member States on 10 points of action on migration, 14 October 2024, p. 5.

² Article 77(4) APR; Joint Letter from the undersigned Ministers on new solutions to address irregular migration to Europe, 15 May 2024, p. 3.

³ COM/2025/259 p. 16.

2. The fundamental rights implications of the safe third country concept under the APR

The European Commission's proposed amendments cannot be assessed without acknowledging the erosion of fundamental rights safeguards under the APR. The criteria for designating third countries as safe have been lowered, resulting in the expansion of the safe third country concept under the APR. The Meijers Committee argues that the safe third country concept is deployed as a bordering tool, to enable swift transfers to third countries, increasing potential human rights risks.⁴ UNHCR stipulates that a precondition for applying the safe third country concept is that applicants for international protection must have access to standards of treatment in the third country that are consistent with the 1951 Refugee Convention, its 1967 Protocol, and international human rights standards. These standards go beyond protection from refoulement.⁵ This means that a third country should be able to provide 'effective protection'. This notion is reflected in Article 59 of the APR, which requires both protection against refoulement and effective protection. In this section, the Meijers Committee elaborates on the fundamental rights risks associated with the safe third country concept under the APR: On one hand, we examine whether there is sufficient protection against refoulement and on the other hand, we highlight the risks related to effective protection in the third state.

In light of Article 4 Charter of Fundamental Rights of the European Union (CFREU), a third country can only be designated as safe if it guarantees protection against refoulement. Consequently, Article 59(1)(a-c) APR conditions the application of the safe third country concept to ensuring protection from persecution in the safe third country and refoulement (including chain refoulement). This means that asylum seekers cannot be transferred to a country where they face persecution or serious harm, or risk of onward transfer to such harm. Considering that the individual assessment – as reflected in Article 59(5)(a) APR – does not involve an examination of the asylum claim on its merits, the Meijers Committee argues that the safe third country concept inherently carries a higher risk of refoulement. This risk is even heightened under the APR as it has introduced new modalities that lower the threshold to designate a third country as safe, broadening its scope of application in furtherance of the EU's aim to mitigate migration pressures.

Article 59(2) APR represents one of those modalities. The provision allows a third country to be designated as safe with exceptions for *specific parts of its territory* and *clearly identifiable categories of persons*. Both exceptions appear fundamentally flawed in light the principle of non-refoulement under Article 4 CFREU. Regarding the exception for "clearly identifiable categories of persons", designating a country as safe for certain groups while acknowledging risks for others inherently undermines the protection system. The application of the safe third country concept relies on a well-functioning asylum system in the country in question, as well as on the proper treatment of individuals recognized as beneficiaries of international protection. This also raises questions about how Article 59(2) APR aligns with the general obligation under Article 59(1)(a-c) APR to ensure that safe third country designations are only permitted if non-nationals are protected from persecution, refoulement, and serious harm pursuant to Article 4 CFREU. The fact that certain groups are unable to benefit from such a system indicates that this basis is lacking. Moreover, Article 59(2) APR could encourage stereotyping of applicants and risks failing to visibly or consistently identify vulnerable individuals, such as those at risk of persecution based on

⁴ B. Osso, Unpacking the Safe Third Country Concept, in the European Union: B/orders, Legal spaces, and Asylum in the Shadow of Externalization, *International Journal of Refugee Law*, Volume 35, Issue 3, October 2023, p. 272–303.

⁵ UNHCR, Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries, April 2018, p. 2; V. Moreno-Lax, 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, 2015), p. 671.

gender or sexual orientation. Classifying a part of a third country as safe may also increase the risk of refoulement, since changing security conditions or the absence of effective state control in such areas can make their designation as safe third countries unreliable. Furthermore, there is a risk that the term “specific parts of a state’s territory” might be applied too rigorously to refer only to designated reception facilities or limited zones, despite the broader territorial scope implied in the wording.⁶ Such interpretation could undermine the requirement of effective protection that the safe third country concept is intended to ensure in terms of reception conditions.⁷ Therefore, the Meijers Committee asserts that the APR further heightens the inherent risk of refoulement under the safe third country concept.

According to the Meijers Committee, this heightened risk is also demonstrated by Article 59(1)(d) APR, which can be regarded as another modality for the expansion of the safe third country concept. Unlike Article 38(1)(e) APD, which requires protection in line with the Refugee Convention, Article 59(1)(d) APR only requires the *possibility* to request and, if eligible, receive effective protection as defined in Article 57, thereby allowing safe third country deals with non-state parties to the Convention. Key elements of effective protection are for asylum seekers to *be treated with standards commensurate with the Refugee Convention its 1967 Protocol and international human rights standards; and, if found to qualify as a refugee, they must be formally recognized and granted lawful stay*.⁸ Accordingly, Article 57(1) APR provides that a third country is considered to provide effective protection if it has ratified *and* respects the Geneva Convention. However, under Article 57(2) APR, effective protection may also be considered to exist if: the individual is allowed to remain in the third country, has access to means of subsistence sufficient to maintain an adequate standard of living, healthcare and essential medical treatment, education, and effective protection remains available until a durable solution is secured. While acknowledging the European Court of Human Rights’ (ECtHR) finding in *Saadi v. Italy* that the mere ratification of international treaties is insufficient to guarantee adequate protection against the risk of ill-treatment under Article 3 ECHR, especially where credible reports indicate that a state’s actual practices contradict the principles of the ECHR,⁹ UNHCR nonetheless emphasizes the importance of treaty ratification. UNHCR notes the ratification of both the Refugee Convention and core human rights instruments to be a “critical indicator” of protection, which can only be effectively and durably guaranteed when states are obliged to do so under international law, have implemented domestic legislation, *and* adhere to their international obligations in practice.¹⁰

The Meijers Committee notes that the EU’s notion of effective protection allows third countries that have not ratified the Refugee Convention or that impose geographical limitations, to offer lower reception standards. We argue that by failing to require third countries to provide protection in line with the Refugee Convention, the APR undermines the Convention’s incremental nature, under which refugees progressively acquire (socio-economic) rights as their connection to the host state grows: first, by virtue of their presence in the state’s territory; secondly, when they are lawfully present; and third, when they are lawfully staying, presupposing recognition of refugee status. As the safe third country concept requires third countries to admit asylum seekers and

⁶ D. Thym, [Expert Opinion](#) on Legal Requirements for Safe Third Countries in Asylum Law and Practical Implementation Options, FZAA Research Centre Immigration & Asylum Law, 3 April 2024, p. 45.

⁷ Article 59(1)(d) APR; See effective protection discussed below.

⁸ UNHCR, Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries, April 2018. This continuous interpretation can be derived from UNHCR, [Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers](#), May 2013; UNHCR, Lisbon Expert Roundtable, Lisbon 9-10 December 2002, [Summary Conclusions on the Concept of ‘Effective Protection’ in the Context of Secondary Movements of Refugees and Asylum Seekers](#), February 2003.

⁹ ECtHR, judgment of 28 February 2008, No. 37201/06, Case of *Saadi v. Italy*, § 147, 148.

¹⁰ UNHCR, Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries, April 2018, § 10.

authorize their stay, the Meijers Committee argues that it thereby confers lawful presence and the rights associated with it. This includes the right to self-employment (Article 18) and freedom of movement (Article 26), subject to regulations applicable to aliens in general.¹¹ UNHCR guidance reinforces that rights relating to lawful presence must be guaranteed during status determination, since it clarified that the right to self-employment may only be temporarily delayed in case of delays in the asylum procedure. Yet, the incremental nature of the Refugee Convention finds no reflection in Article 57(2) APR.¹² A combined reading of Articles 57(2)(a) and (e) APR implies that effective protection must be ensured for as long as the person remains in the third country – until a durable solution is found.¹³ In the absence of a rejected asylum application, and in line with UNHCR guidance, durable solutions include voluntary return, resettlement, or local integration – which presupposes access to third-stage rights, such as wage-earning employment and housing. Considering that third countries are not formally required to grant refugee status, they are thus not obliged to provide third-stage rights, however the Meijers Committee, with reference to Article 59(1)(d) APR, maintains that the EU and its Member States must ensure that any safe third country deal provides a genuine *possibility* for a durable solution, including access to third stage rights.¹⁴ Against this backdrop, the Meijers Committee highlights the failure of past arrangements, notably the EU-Turkey deal.¹⁵ Turkey’s designation as a safe third country remains disputed due to its geographical limitation under the Refugee Convention, which restricts obligations to refugees from Council of Europe Member States.¹⁶ The Greek Appeals Committee – later replaced by the ‘independent appeals committee’ – suspended most returns of Syrians, due to the limited “possibility to apply for, receive, and enjoy refugee status”, noting limited access to rights such as housing and wage-earning employment.¹⁷

The Meijers Committee emphasizes that the EU’s restrictive “notion of effective protection” permits the application of the safe third country concept in ways that may fail to find a durable solution, offering only minimal reception conditions and neglecting the progressive self-reliance that the Refugee Convention envisions. Such an approach might lead to orbit situations, risks breaching international refugee and human rights law – a precondition for the lawful application of the safe third country concept – and raises serious concerns about its good faith implementation. Therefore, the Meijers Committee finds that the EU’s fragmented interpretation and implementation of effective protection fails to uphold the level of protection envisioned by the Refugee Convention and might be incompatible with Article 78(1) TFEU, which requires the EU’s common policy on asylum, subsidiary protection and temporary protection, to be consistent with the 1951 Convention, its 1967 Protocol, and other relevant international instruments, including the right to asylum under Article 18 CFREU.¹⁸

¹¹ EPRS, *Refugee Status under International Law*, October 2015, p. 2.

¹² UNHCR, *Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries*, April 2018, § 9.

¹³ Article 57(2)(a) APR: “the persons referred to in paragraph 1 are allowed to remain on the territory of the third country in question”. Article 57 2(e) APR: “effective protection remains available until a durable solution can be found”.

¹⁴ Article 59(1)(d) APR: the possibility exists to request and, where conditions are fulfilled, receive effective protection as defined in Article 57.

¹⁵ Under this agreement, asylum seekers arriving on the Greek islands were to be returned to Turkey as a safe third country. And for every Syrian returned to Turkey, another would be resettled in the EU. Yet, between by March 2020, only 2,735 migrants were returned, whereas 27000 Syrians were resettled to EU Member States. See Meijers Committee, *CM2506*, Meijers Committee Comment On Third Country Migration Agreements; See also European Commission, [EU-Turkey Statement, Four years on](#), March 2020.

¹⁶ T. Angeliki, *When Greek Judges Decide Whether Turkey is a Safe Third Country without Caring Too Much for EU Law*, EU migration law blog ([online](#)), 29 May 2018.

¹⁷ M. Gkliati, [The Application of the EU-Turkey Agreement](#): A Critical Analysis of the Decisions of the Greek Appeals Committees, EJIL (Vol. 10 No. 1), p. 106, 114.

¹⁸ ECRE, *Comments on the 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*, October 2024, p. 96, 99. See by analogy CJEU, 11 June 2024, C-646/21, K and L, § 36.

2. The review of the safe third country concept under Article 77 (4) APR

In this section, the Meijers Committee addresses the two elements the Commission has identified for a targeted amendment of the APR: the requirement of a connection between the applicant and the third country (the connection criterion); and the suspensive effect of the appeal against decisions rejecting an application as inadmissible on the safe third country ground.¹⁹ The Meijers Committee contends that these targeted amendments risk further undermining the fundamental rights safeguards relating to the safe third country concept, particularly the right to human dignity under Article 1 CFREU, the right to asylum under Article 18 CFREU, the right to an effective remedy under Article 47 CFREU and the principle of non-refoulement under Article 4 CFREU.

2.1. *The proposal to make the application of the connection criterion optional*

The connection criterion, currently outlined in Article 38(2)(a) APD and maintained under Article 59(5)(b) APR, allows transfers to safe third countries only if a connection exists between the applicant and the third country making it reasonable for them to go there.²⁰ The proposed review of the safe third country concept under the APR entails a removal of the mandatory requirement of a connection with the third country. The targeted amendments provide that the safe third country concept may also be applied in cases where the applicant has transited through the third country concerned.²¹ Furthermore, the safe third country concept may be applied on the basis of an agreement or arrangement with a third country that provides for an examination of the merits of the requests for effective protection made by asylum applicants subject to that agreement or arrangement – meaning that the third country should ensure an examination of the request for effective protection. This last option does not apply to unaccompanied minors.²²

Arguments for removing the connection criterion are largely politically motivated, because Member States aim to strengthen migration control and enable transfers to distant third countries as a deterrent.²³ Furthermore, according to the European Commission, many Member States view the connection criterion as an obstacle to securing agreements with third countries.²⁴ The non-mandatory nature of the connection criterion under international law facilitates these arguments. Nonetheless, the Meijers Committee considers that the safe third country concept itself is not recognized under international law.

Removing the connection criterion will enable EU Member States to conclude more safe third country deals. The Meijers Committee firstly questions whether removing the connection criterion is compatible with Article 1 CFREU. It is doubtful that an individual can be expected to build a life of human dignity in a country where no meaningful ties exist. This concern is even more persisting in light of the notion of effective protection under the APR. UNHCR has consistently advocated for a meaningful link or connection that ensures an individual's transfer to another state is reasonable and sustainable,²⁵ asserting that the duration and nature of a person's stay, along with family or other close ties, are crucial factors in determining the viability of return or

¹⁹ COM/2025/259 p. 16.

²⁰ Article 59(5)(b)(i).

²¹ Article 59(5)(b)(ii).

²² Article 59(5)(b)(iii).

²³ UNHCR, Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries, April 2018, § 6.

²⁴ COM/2025/259 p. 3.

²⁵ Ibid; UNHCR, Considerations on the "[Safe Third Country](#)" Concept, July 1996; UNHCR, Lisbon Expert Roundtable, Lisbon 9-10 December 2002, "[Summary Conclusions on the Concept of 'Effective Protection' in the Context of Secondary Movements of Refugees and Asylum Seekers](#)", February 2003, § 12.

transfer for both the individual and the state.²⁶ In our view the connection criterion increases the chance of accessing support networks, integrating, and securing adequate protection. Illustrative in this regard is the Dublin Regulation, which determines which EU Member State is responsible for examining an asylum application, giving highest priority to family considerations.²⁷ Furthermore, it makes it more likely that a third country takes responsibility for the asylum application in practice. In this sense, “countries have no underlying obligation to take back non-citizens who have transited their territory – and still less to take those who have never been anywhere near it”.²⁸ The Meijers Committee notes that pursuant to Articles 38(1)(b) and 59(9) APR, third countries cannot be considered safe if applicants will not be (re)admitted, and in such cases, applicants must be granted access to an asylum procedure within the EU. In this regard we warn that prioritizing swift deals over safety could burden Member States’ asylum systems, as they remain responsible for assessing applications if (re)admission fails. Moreover, by further expanding the safe third country concept, the EU could become increasingly dependent on third countries for migration management.²⁹

The removal of the connection criterion could heighten the risk of asylum seekers not being able to secure even a minimum standard of existence in a third country. Simultaneously, this approach might reinforce secondary movements back to the EU. This could undermine the intended reduction of administrative burdens on Member States³⁰ and weaken the deterrent effect that proponents of the safe third country concept claim it would produce – an effect essential to justify the considerable financial investments EU Member States must make to realise such schemes.³¹ The application of the safe third country concept, alongside non-refoulement and effective protection, should be guided by the spirit of international cooperation. This entails adopting measures that aim to promote responsibility-sharing. States must fulfil their obligations under international refugee and human rights law in good faith, ensuring that protection remains the primary objective. Conversely, measures preventing international protection seekers from access to international protection or that allow transfers of applicants to countries with insufficient safeguards risk amounting to a form of externalisation.³² Considering the APR reforms, the European Commission’s aim in removing the connection criterion for “expanding the number of applicants to whom the safe third country concept could be applied” further risks undermining the cooperative spirit in application of the safe third country concept and may be at odds with Article 78 TFEU. In this regard, the Meijers Committee disagrees with the European Commission’s assertion that removing the connection criterion could enhance responsibility sharing and possibly expand the global protection space.³³ Rather, it shifts the ‘burden’ to third states. We emphasize that a broad use of the third country concept, without due regard to the effective access to international protection in the third State may compromise the effectiveness of the right to asylum guaranteed by Article 18 CFREU. In this regard, the CJEU held that measures that discourage international protection seekers to apply for international protection are liable to undermine the effectiveness of the right to asylum, pursuant to Article 18 CFREU.³⁴

²⁶ UNHCR, Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries, April 2018, § 6.

²⁷ Paolo Biondi, The right to perform secondary movements under international refugee law, EU law analysis blog ([online](#)), 23 February 2025.

²⁸ S. Peers, Towards a Euro-Rwanda policy? The proposed new EU asylum law rules on ‘safe third countries’, EU law analysis ([online](#)), 21 May 2025.

²⁹ Asile, Why the EU-Turkey Statement should never serve as a blueprint, 7 October 2020.

³⁰ COM/2025/259 p. 3.

³¹ D. Thym, Safe Third Countries: the Next ‘Battlefield’, EU Migration Law log ([online](#)), 5 July 2024.

³² UNHCR, UNHCR Note on the “Externalization” of International Protection, 28 May 2021.

³³ COM/2025/259 p. 3.

³⁴ CJEU, Judgement of 3 June 2025, C-460/23, Kinsa, § 61, 62.

The Meijers Committee is also concerned by the inclusion of a transit criterion in the Commission’s proposal.³⁵ It follows from established CJEU case law that transfers under the safe third country concept must meet the standard of reasonableness.³⁶ Maintaining the connection criterion under the APR ensures the continued applicability of CJEU jurisprudence. The CJEU held that “the fact that an applicant for international protection has transited through the territory of a third country cannot alone constitute a valid reason for considering that that applicant could reasonably return to that country”.³⁷ This reading is substantiated by case law from Member State authorities.³⁸ According to UNHCR, transit is often the result of fortuitous circumstances and does not necessarily imply the existence of any meaningful link or connection nor does it imply entitlement to entry without the presence of a meaningful link.³⁹ As the Meijers Committee generally oppose the application of the safe third country concept to unaccompanied minors, we strongly oppose including them under Article 59(5)(b)(ii) APR. CJEU case law requires Member States to conduct a thorough, individualized assessment of each unaccompanied minor’s situation, ensuring the child’s best interests under Article 24(2) CFREU. Inadmissibility procedures may not guarantee this. States must also ensure adequate reception facilities.⁴⁰ The safeguards in Article 59(6) APR – requiring respect for the child’s best interests and access to protection – may be insufficient under the EU’s notion of effective protection. Maintaining the connection criterion may therefore be necessary. As such, the Meijers Committee opposes the Commission’s pretence that transit through a safe third country constitutes an “objective link” between the applicant and the country concerned.⁴¹ Such reading undermines the authoritative interpretation of case law by the CJEU. Although the aforementioned judgment was based on the text of the APD, the Meijers Committee argues that it entails an interpretation which “supports the argument that a lack of substantive ties in a transit country may justify onward movement”, reflecting the right of asylum under Article 18 CFREU.⁴² As such, the Meijers Committee wishes to reiterate UNHCR, that although the 1951 Refugee convention does not grant refugees the right to choose their host state, it does not require them to seek protection at the first effective opportunity and their intentions ought to be taken into account.⁴³

Transferring applicants for international protection to third countries without any ties risks diminishing human dignity under Article 1 CFREU. The newly proposed Article 59(5)(b)(iii) could result in asylum seekers being transferred to third countries solely because the EU or its Member States have reached an agreement with those countries, rather than reflecting the underlying premise of the safe third country concept – that asylum could have been sought earlier in refugees’ journeys. The principle of proportionality pursuant to Article 5 TEU can serve as an important safeguard to preclude Member States from sending asylum seekers to a third country they have no ties to.⁴⁴ The European Commission regards the removal of the connection criterion as suitable and necessary to allow Member States more flexibility in the application of the safe

³⁵ Article 59(5)(b)(ii) APR.

³⁶ CJEU, Judgement of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompá)*, C-564/18, § 46; Recital 48 APR.

³⁷ CJEU, Judgement of 19 March 2020, *Bevándorlási és Menekültügyi Hivatal (Tompá)*, C-564/18, § 47.

³⁸ ECRE, *Creating More “Safe” Countries and Frontloading the Pact: ECRE’s Analysis of the Proposed Amendments to the Asylum Procedures Regulation Covering Safe Countries of Origin, Frontloading the Pact and Safe Third Countries, and the Politics Behind the Measures*, July 2025, p. 15.

³⁹ UNHCR, *Legal considerations on returning asylum seekers & refugees from Greece to Turkey under safe third country & first country of asylum concept*, p. 6.

⁴⁰ CJEU, judgment of 14 Januari 2021, *Staatssecretaris van Justitie en Veiligheid*, C-441/19, § 52-60; See also judgments of 11 December 2014 *Boudjlida*, C-249/13, § 48; and judgment of 8 May 2018, *K.A. and Other*, C-82/16, § 102.

⁴¹ COM/2025/259, p. 15.

⁴² Paolo Biondi, *The right to perform secondary movements under international refugee law*, EU law analysis (online), 23 February 2025.

⁴³ UNHCR, *Legal Considerations Regarding Access to Protection and a Connection between the Refugee and the Third Country in the Context of Return or Transfer to Safe Third Countries*, April 2018, § 2.

⁴⁴ J. Bornemann, *Efficiency, but at What Cost. The Commission’s Proposal for a Common European System for Returns*, *Verfassungsblog* (online), 21 March 2025.

third country concept,⁴⁵ stating advantages such as greater flexibility in managing asylum applications – especially during periods of high migratory pressure – and the potential to forge new partnerships with additional third countries, thereby expanding the global protection space. However, the Meijers Committee argues that less intrusive measures⁴⁶ may suffice to manage migratory pressure and questions whether the removal of the connection criterion is a suitable measure for this objective as we doubt that it will provide durable solutions and believe that such transfers could prompt onward movement back to the EU. While EU Member States may intend to only conclude deals with genuinely safe third countries, an uncritical reliance on this intention in practice risks operating in a realm where potential risks are inadequately assessed. In this regard, we highlight the failed UK-Rwanda deal, noting that despite Rwanda being a state party to the Refugee Convention, the UK Supreme Court found it not to be a safe third country in practice due to a real risk of ill-treatment under Article 3 ECHR. The UK Supreme Court rejected the government’s argument that Rwanda’s past failures – such as *refoulement* and non-compliance with prior assurances – should not affect the assessment of the deal, despite proposed monitoring and financial incentives. Instead, the Supreme Court emphasized that what matters is not Rwanda’s intentions or political goodwill, but its current practical ability to meet its assurances, given ongoing deficiencies in its asylum system, a history of *refoulement*, and the significant reforms still required in procedures, capacity, and institutional culture. The foregoing raises the question whether EU Member States can find a non-EU country that is not only willing and able to take their asylum seekers but also genuinely safe.⁴⁷ The Meijers Committee doubts it. Externalisation policies have shown to be costly and ineffective in achieving their intended goals. Moreover, their legality has been contested across multiple jurisdictions before domestic, regional and international bodies, raising concerns under international refugee and human rights law.⁴⁸ Therefore, this proposal risks placing a disproportionate burden on asylum seekers as applicants could be removed to countries far from their country of origin, thereby complicating integration in the third country, and risk not having access to asylum procedures. Recognizing individual differences between international protection seekers as some individuals might still be able to find effective protection. This cannot be assumed on the basis of Article 57(2) APR for all cases and effective protection might be better achieved when there is a connection to a third state.

While it may be argued that many asylum seekers have no prior connection to the EU when seeking international protection, EU legislation provides comprehensive safeguards against *refoulement*⁴⁹ and Member States are bound by numerous human rights obligations under the ECHR and CFREU. Even within the EU’s Dublin system – based on harmonized asylum legislation and mutual trust – compliance with these standards is not foolproof, and human rights concerns remain. Still, as previously said, the EU Dublin’s system prioritizes a connection, specifically family considerations. This substantiates the argument that safe third country deals require full adherence to international human rights standards yet still necessitate a meaningful connection. By contrast, safe third country deals with non-EU states often lack binding legal obligations, robust safeguards, and reliable asylum systems, making them significantly more fragile, thus

⁴⁵ COM/2025/259, p. 7.

⁴⁶ Regulation (EU) 2024/1359 establishes a mechanism to assess whether a Member State is confronted with an emergency situation and specifies the corresponding measures to be activated, including enhanced solidarity provisions and temporary derogations from the APR.

⁴⁷ UK Supreme Court, *R (AAA & others) v Secretary of State for the Home Department*, UKSC 42, 15 November 2023, § 102.

⁴⁸ A. Pijnenburg, K. van der Plas, *Litigating Externalisation Policies: The Added Value of a Multi-Level Legal Order?*, *Refugee Survey Quarterly*, 2025, 44, p. 345–369.

⁴⁹ D. Thym, *Safe Third Countries: the Next ‘Battlefield’*, *EU migration law blog (online)*, 5 July 2024.

raising concerns under Article 4 CFREU and Article 3 ECHR.⁵⁰ The European Commission appears to respond to the concerns about the complete removal of any form of connection under Article 59(5)(b)(iii) APR, by requiring that such agreements or arrangements ensure that applicants have access to a procedure in the safe third country to apply for and receive protection if needed.⁵¹ While presented as a safeguard, the Meijers Committee considers this inadequate. Articles 59(1)(d) and 57 APR already oblige Member States to guarantee effective protection in the third state when applying the safe third country concept. This aligns with ECtHR case law, that pursuant to Article 3 ECHR, states should conduct a thorough examination of the relevant conditions in the third country and, in particular, the accessibility and reliability of its asylum system before removing an individual.⁵² As such, the requirement under Article 59(5)(b)(iii) doesn't add any real safeguards.

Moreover, previous migration management deals, including the EU-turkey deal, illustrate how limited the legal effect of third-country deals is for asylum seekers,⁵³ who have no means to enforce the obligations contained therein. In this regard, it should be noted that when Member States opt for "arrangements" rather than formal "agreements," these instruments produce very little binding legal effect to parties.

More generally, the Meijers Committee wishes to highlight that by removing the connection criterion, more persons will fall under the scope of the admissibility procedure of Article 38(1)(b) APR as Member States will no longer need to demonstrate a connection. This might restrict the right to asylum under Article 18 CFREU considering that international protection seekers will be denied a merits-based assessment of their asylum claims. At the same time, the proposed amendments could further enhance fragmentation in the application of the safe third country concept. Some Member States may continue to apply the connection criterion – which sets a higher bar for transferring asylum seekers to a third country due to the 'reasonability test' – while others may opt for the more lenient amendments under Article 59(5)(b) APR. Maintaining the connection criterion as mandatory could prevent this. Divergent national practices could lead to unequal access to asylum procedures across the Union, undermining Article 18 CFREU. This, in turn, may encourage applicants to move toward Member States with more favourable systems. Such discrepancies hinder the EU's goal of a harmonized asylum system and, as the Commission itself notes, risks creating legal uncertainty, increased litigation, and uneven application of asylum rules across the Union.⁵⁴ Lastly, the Meijers Committee wishes to highlight Advocate General Bobek, who argued that "if the concept of safe third country is to have any independent meaning, the interpretation of that concept cannot lead to the quasi-automatic removal of applicants", as this could lead to a domino effect in which no state assumes responsibility for examining the merits of an asylum claim.⁵⁵ This concern refers to the risk that asylum seekers are transferred or deported in a way that is almost automatic, without a proper individual assessment of their situation. The resulting domino effect – where no state takes responsibility for examining the merits of an application – carries an even higher risk given the lowered standards for designating a third country as safe. In this view maintaining the connection criterion might enhance the individuality of the admissibility procedure and thus, protection under Article 4 CJEU.

⁵⁰ S. Peers, Towards a Euro-Rwanda policy? The proposed new EU asylum law rules on 'safe third countries', EU law analysis (online), 21 May 2025.

⁵¹ SWD/2025/600, p. 19.

⁵² ECtHR, judgement of 21 November 2019, No. 47287/15, Case of Ilias and Ahmed v. Hungary, §139.

⁵³ Meijers Committee, CM2506, Meijers Committee Comment On Third Country Migration Agreements.

⁵⁴ SWD/2025/600, p. 4

⁵⁵ Opinion, A-G Bobek, CJEU, Judgement of 19 March 2020, Bevéndorlási és Menekültügyi Hivatal(Tompa), C-564/18, §64.

2.2. *The proposal to remove the automatic suspensive effect of appeals against inadmissibility decisions taken on the STC ground*

The European Commission has proposed removing the suspensive effect of appeals against inadmissibility decisions based on the safe third country concept, citing Member States' aim to reduce procedural delays, lower the financial costs of reception, prevent abuse of appeals, and align with accelerated and border procedures.⁵⁶ According to Article 68(2) APR, applicants have the right to remain until the deadline for filing an appeal against a return decision has expired or if an appeal is lodged, pending the outcome of the remedy. In the latter case, Article 68(1) APR grants applicants a provisional right to remain until a final judgment is issued. However, the proposed amendment would result in the inclusion of Article 38(b) under Article 68(3)(b) APR, which stipulates that certain applicants shall not have the right to remain. The inadmissibility decision under art 38(1)(b) APR should be distinguished from the return decision, which pursuant to Article 37 APR ensures that when there is a risk of refoulement, an automatic suspensive effect applies to the return decision linked to the inadmissibility decision. However, retaining this safeguard alone is insufficient. Under the proposed amendment, applicants would no longer automatically have the right to remain in the Member State while awaiting a final decision. Pursuant to Articles 68(3) and 68(4) APR, they would instead need to actively request the court to grant interim measures to restore the suspensive effect of their appeal, or the court would have to exercise this power on its own motion. It is likely that this will lead to increased litigation. Furthermore, the time limit to file an appeal has been shortened to 5 - 10 days and the suspensive effect of the appeal can only be reinstated within 5 days.⁵⁷ This heightens the risk of refoulement under Article 4 CFREU. Moreover, the automatic suspensive effect of appeals against the inadmissibility decision is a crucial safeguard against refoulement, given the irreversible harm that can occur as a result of wrongful transfers due to flawed assessments or legal errors. This risk is already present, given that inadmissibility decisions under the APR do not require an assessment on the merits, coupled with the heightened risks that applicants falling under Article 59(2) APR may face if certain parts of a state's territory are deemed safe or if protection is provided only to specific groups.

The CJEU has established that Article 47 CFREU requires appeals against return decisions to have automatic suspensive effect when there are substantial grounds for believing that a return could expose individuals to a real risk of ill-treatment contrary to Articles 18 and 19(2) CFREU and 33 Refugee Convention. Consequently, when an appeal is lodged against the rejection of an international protection application, the legal effects of the return decision must be suspended, ensuring that applicants retain their right to remain under the APR.⁵⁸ Furthermore, the ECtHR held that "where an applicant seeks to prevent his or her removal from a Contracting State, a remedy will only be effective if it has automatic suspensive effect".⁵⁹ Pursuant to Article 59(5)(a) APR, the admissibility procedure under Article 38(1)(b) APR grants applicants the right to challenge the application of the safe third country concept to their individual circumstances. By doing so, applicants try to prevent their removal from Member States. In this regard, an appeal risks losing its effect when there is a possibility that asylum seekers can be transferred before a final judgment is issued. Therefore, the removal of the automatic suspensive effect of appeals against inadmissibility decisions would not truly guarantee an effective remedy, as it fails to take account of ECtHR case law, which increasingly questions systems in which interim protection has to be

⁵⁶COM/2025/259 p.14.

⁵⁷ Article 67(7)(a) APR, which differs from the requirement to provide 'reasonable' time limits under Article 46(4) APD; Article 68(5) APR.

⁵⁸CJEU, Judgement of 19 June 2018, *Sadikou Gnandi v. Etat belge*, C-181/16, § 62.

⁵⁹ECtHR, judgement of 11 December 2018, No. 59793/17, *Case of M.A. And Others. V. Lithuania*, § 88.

separately requested.⁶⁰ The Court has emphasized the risks of a system where stays of execution must be requested individually and are provided for on a case-by-case basis, as they may be wrongly denied.⁶¹ Moreover, concerning the safe country of origin concept under the APD, the CJEU recently confirmed that national courts of appeal must, on their own motion, assess any breach of EU law in the designation of countries as safe – even where applicants do not raise the issue themselves. This duty becomes particularly important when a country deemed safe has made derogations from its international obligations.⁶² Although the case concerned derogations under the ECHR, the same reasoning can extend to other human rights instruments and the Refugee Convention, both of which are expressly referenced in the APR. This judgment thus supports the argument that the APR's lower threshold for deeming a country safe may lead to a broader obligation for courts to examine such designations on their own motion due to fundamental rights risks.⁶³ At the same time it confirms that heightened risks in regard to refoulement and effective protection due to the reforms under the APR necessitate procedural safeguards such as the automatic suspensive effect of the appeal.

Conclusion

The Meijers Committee is worried that the reforms under the APR will facilitate and increase the conclusion of additional safe third country deals. Simultaneously, they exacerbate the risk of refoulement and compromise access to durable protection, as the APR lowers the threshold for deeming a country safe and appears to reduce protection standards to international minimum standards. The removal of the connection criterion might further expand the scope of the admissibility procedure under Article 38(1)(b) APR, as Member States will no longer be required to demonstrate any meaningful link to the third country. Considering the EU's notion of effective protection, serious questions arise as to whether transferred asylum seekers will be able to attain a standard of living consistent with human dignity under Article 1 CFREU, if the connection criterion is removed. Combined with the possibility that the automatic suspensive effect of appeals may no longer be granted after a negative admissibility decision – thus enabling transfers before a final judgment – this cumulative removal of safeguards poses risks to the right to an effective remedy under Article 47 CFREU, of refoulement under Article 4 CFREU and risks circumventing and undermining the right to asylum guaranteed by Article 18 CFREU. The Meijers Committee further argues that by shifting responsibility to third countries the EU is acting inconsistent with the principles of international cooperation. By facilitating more deals for migration management, the EU creates a dependency on third countries, which need to be incentivized for cooperation, risking violations of fundamental rights due to lowered safeguards. At the same time these measures may ultimately backfire, undermining the EU's own objectives of harmonisation and the acceleration of asylum procedures. Requiring the connection criterion could prevent such outcomes. To secure safe third country deals with adequate protection we urge the co-legislators to amend the proposal in accordance with our proposed recommendations.

⁶⁰ ECRE, Comments on the 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, October 2024, p. 109.

⁶¹ ECtHR, Judgment of 23 July 2013, Case of M.A. v. Cyprus, No. 41872/10, § 137; ECtHR, Judgment of 5 February 2002, Case of Čonka v. Belgium, No. 51564/99, § 82.

⁶² CJEU, Judgment of 4 October 2024, CV v. Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky, § 96.

⁶³ S. Peers, Safe countries of origin' in asylum law: the CJEU first interprets the concept, EU law analysis ([online](#)), 14 October 2024.

Recommendations

We urge the co-legislators to amend the proposal in accordance with the following recommendations:

1. Connection criterion

- Do not amend Article 59(5)(b) APR but maintain the existing formulation: “there is a connection between the applicant and the third country in question on the basis of which it would be reasonable for him or her to go to that country.”

Alternatively, if this is not possible:

- Delete point (b) (iii) from the Commission’s proposal: “~~iii) there is an 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.~~”

Alternatively, if this is also not possible:

- Amend point (b)(iii) APR as follows: “there is an 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, and the third country concerned provides protection in accordance with the Geneva Convention.”

In addition:

- Amend Article 59(5)(b) as follows: (...) In the application of the first paragraph, point (b), the best interests of the child shall be a primary consideration. The first paragraph, points (b) (ii) and (iii), shall not apply where the applicant is an unaccompanied minor.”

Alternatively, if it is not possible to maintain our recommendations, we suggest to:

- Amend Article 59(5)(b) APR as follows:
“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 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.
In the application of the first paragraph, point (b), the best interests of the child shall be a primary consideration. The first paragraph, points (b) (ii) and (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).”

2. Automatic suspensive effect of appeals

- Do not amend Article 68(3)(b) APR but maintain the existing formulation: “a decision which rejects an application as inadmissible pursuant to Article 38(1), point (a), (d) or (e), or Article 38(2), except where the applicant is an unaccompanied minor subject to the border procedure.”

3. Effective protection

- Amend Article 59(1)(d) APR to revert to the formulation of Article 38(1)(e) APD: “the possibility exists to request refugee status and, if found to meet the definition of refugee, to receive protection in accordance with the Geneva Convention.”

Alternatively, if amending Article 59(1)(d) APR as suggested is not possible:

- Amend Article 57(1) APR as follows: “A third country that has ratified and respects the Geneva Convention within the limits of the derogations or limitations made by that third country, as permitted under that Convention, shall be considered to ensure effective protection. ~~In the case of geographical limitations made by the third country, the existence of protection for persons who fall outside of the scope of the Geneva Convention shall be assessed in accordance with the criteria set out in paragraph 2.~~ In the case of geographical limitations made by the third country, protection for persons who fall outside of the scope of the Geneva Convention shall be deemed to exist if in practice the third country provides protection in accordance with the Geneva Convention to these persons.”
- Delete Article 57(2) APR.

About

The Meijers Committee is an independent group of experts that researches and advises on European criminal, migration, refugee, privacy, non-discrimination and constitutional law.



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