

To: [REDACTED]
Date: November 6, 2025
Subject: Review of the safe third country concept under the EU Asylum Procedure Regulation

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With this letter, 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. This letter intends to summarise the concerns we set out more thoroughly in the annexed comment (CM2518).

Fundamental rights implications of the safe third country concept under the APR

Protection against *refoulement* and the provision of effective protection in the third state are preconditions for the application of the safe third country concept under the APR. The STC concept inherently carries a risk of *refoulement*, as applicants may be transferred without a proper merits-based assessment. However, the APR introduced new modalities that lower the threshold to designate a third country as safe, heightening the risk that transfers constitute *refoulement* in breach of Article 19(2) EU Charter of Fundamental Rights (CFREU). Firstly, Article 59(2) APR allows for safe third country designations with exceptions to *specific parts of a state's territory* and *clearly identifiable categories of persons*. Such designations are problematic, as the safe third country concept presupposes a well-functioning asylum system and adequate treatment of recognized beneficiaries of international protection. Where effective state control is lacking in parts of a territory, the reliability of these designations is also undermined. Secondly, Article 59(1)(d) APR makes the designation of safe third countries contingent on the *possibility* for applicants to request and, if eligible, receive effective protection pursuant to Article 57 APR, which allows third countries that have not ratified the Refugee Convention, or that maintain geographical limitations, to provide lower reception standards. The ratification of the Refugee Convention and human rights instruments is a critical indicator of protection against *refoulement*. Furthermore, the failure to require third countries' adherence to the Refugee Convention for safe third country designation undermines the Convention's incremental framework, which envisages the progressive acquisition of socio-economic rights. The admission of international protection seekers by third countries should give rise to lawful presence and a host of corresponding rights. By offering minimal reception conditions and disregarding progressive self-reliance, the APR not only fragments protection standards but may also contribute to "orbit situations" and undermine durable solutions. This is inconsistent with Article 78(1) of the Treaty on the Functioning of the EU, which obliges the EU's common asylum policy to align with the Refugee Convention and uphold the right to asylum under Article 18 CFREU.

Fundamental rights risks

The Meijers Committee finds that the proposed targeted amendments further risk 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 19(2) CFREU. The Commission's proposal removes the mandatory

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connection criterion, which determines whether it is reasonable for an applicant to be transferred to a third country, allowing the safe third country concept to apply in cases of mere transit and based on 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. This may conflict with the right to human dignity under Article 1 CFREU, as the connection criterion enhances access to support networks, integration, and effective protection. Its removal – considering the lowered safeguards under the APR – also risks increasing secondary movements back to the EU, undermining efficiency and the intended deterrent effect of the safe third country concept. The Meijers Committee stresses that the application of the safe third country concept must reflect international cooperation and responsibility-sharing, ensuring compliance with international refugee and human rights law. However, measures that restrict access to international protection and cumulatively remove safeguards risk amounting to a form of externalisation, undermining the cooperative spirit and the principle of good faith required under Article 78 TFEU, and effectively shifting the responsibility onto third states. Therefore, 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.

According to the Court of Justice of EU (CJEU) case law, transfers under the safe third country concept must meet the standard of reasonableness. Furthermore, transit alone does not create a connection sufficient to justify return. While relevant case law concerns the Asylum Procedures Directive, it supports the position that a lack of substantive ties with a transit country may justify onward movement, consistent with Article 18 CFREU. Therefore, we reiterate UNHCR's position that, although the 1951 Refugee Convention does not grant refugees the right to choose their host state, it does not obligate them to seek protection at the first available opportunity, and their intentions must be considered. The Meijers Committee generally opposes the application of the safe third country (STC) concept to unaccompanied minors and more strongly opposes including them under the transit criterion. According to CJEU case law, Member States must conduct a thorough and individualized assessment of unaccompanied minor's situation, taking full account of the child's best interests under Article 24(2) CFREU – something inadmissibility procedures cannot reliably ensure. Concerns are heightened because the safeguards in Article 59(6) APR, which deem a third country safe only if it respects the child's best interests and provides immediate access to effective protection, may be insufficient in light of the arguments raised above. Ensuring effective protection for unaccompanied minors therefore requires maintaining the connection criterion.

The connection requirement should be maintained

Transferring asylum applicants to third countries with which they have no ties contradicts the safe third country concept's underlying premise that asylum could have been sought earlier. The principle of proportionality under Article 5 of the Treaty on European Union might safeguard against transfers to countries with no meaningful connection. While the Commission seeks flexibility to manage migratory pressure, the EU already has less intrusive measures available. Furthermore, previous deals, such as the UK-Rwanda agreement, highlight the difficulty of ensuring third countries are willing and capable of providing protection, while externalisation policies have proven costly, ineffective, and legally contested, raising concerns under international refugee and human rights law. The proposal's requirement that such agreements or arrangements ensure access to a procedure in the safe third country to apply for and receive effective protection adds no real safeguard. Member States are already required under Article 57 APR to guarantee effective protection in the third country, a duty

reinforced by case law of the European Court of Human Rights (ECtHR), which obliges states to assess the accessibility and reliability of that country's asylum system before removal. Any transfers should be made pursuant to formal agreements rather than informal arrangements, as the latter are not legally binding and their legality is therefore more difficult to challenge.

While many asylum seekers may have no prior connection to the EU, comprehensive protection against *refoulement* exist under the European Convention on Human Rights and CFREU. Furthermore, the Dublin system emphasizes connections, such as family ties, showing that safe third country deals necessitate both adherence to human rights standards and meaningful links. By contrast, safe third country arrangements with non-EU states often lack binding obligations, reliable asylum systems, and robust safeguards. Removing the connection criterion would further expand admissibility procedures under Article 38(1)(b) APR, potentially limiting the right to asylum under Article 18 CFREU. Maintaining the mandatory connection criterion might help to reduce fragmentation across Member States as secondary movements within the Union could increase considering that applicants may aim for Member States requiring a connection with the safe country. Furthermore, it prevents asylum seekers from being transferred or deported in a way that is 'quasi-automatic', without a proper individual assessment of their situation. Therefore, maintaining the connection criterion might enhance the individuality of the admissibility procedure and thus, protection under Article 19(2) CFREU.

The automatic suspensive effect of appeals should not be removed

The European Commission proposes removing the automatic suspensive effect of appeals against inadmissibility decisions under the STC concept to reduce delays and costs and align with accelerated procedures. Currently, applicants retain a right to remain pending appeal against inadmissibility decisions. Under the proposal, applicants would need to request the court to grant interim measures restoring the suspensive effect, or the court would have to act on its own motion. With very short deadlines (five to ten days to file and five days to reinstate suspensive effect), this reform heightens *refoulement* risks under Article 19(2) CFREU. The automatic suspensive effect is a crucial safeguard against *refoulement*, given the irreversible harm from wrongful transfers due to flawed assessments or legal errors. This risk already exists, as admissibility procedures do not assess the merits of asylum claims. Both the CJEU and ECtHR have held that effective appeals against removal require automatic suspensive effect because an appeal risks losing its effect when transfers occur before a final judgment. Moreover, the ECtHR has stressed the danger of systems where stays must be requested individually as they may be wrongly denied. Recent CJEU case law also indicates that the APR's lower threshold for deeming a country safe may broaden courts' duty to examine such designations on their own motion due to fundamental rights risks. At the same time, it confirms that heightened *refoulement* risks under the APR reforms necessitate safeguards such as the automatic suspensive effect of appeals.

The Meijers Committee emphasizes that the APR reforms and proposed targeted amendments cumulatively undermine protection for asylum seekers under the STC concept. Lowering the threshold for deeming a country safe, compromises the prohibition of *refoulement* and the provision of effective protection and therefore access to durable solutions. Removing the connection criterion risks transfers to third countries without meaningful ties, potentially compromising human dignity under Article 1 CFREU. 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 and the principle of non-*refoulement* under Article 4 CFREU. Furthermore, these measures shift

responsibility to third countries, conflicting with the right to asylum under Article 18 CFREU and the principle of international cooperation. By facilitating more migration management deals, the EU creates dependency on third countries that must be incentivized to cooperate and increases the risk of fundamental rights violations. Therefore, the Meijers Committee strongly advises to maintain the mandatory connection criterion to avoid measures that could backfire and undermine the EU's objectives of harmonisation and procedural efficiency.

Recommendations

The Meijers Committee is worried that the reforms under the APR will facilitate and increase the conclusion of additional STC arrangements. 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 19(2) 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 the European Parliament 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 Article 59(5)(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~~

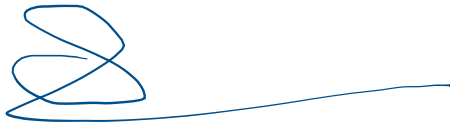
of the Geneva Convention shall be deemed to exist if in practice the third country provides protection in accordance with the Geneva Convention to these persons.”

- Delete Article 57(2) APR.

Please do not hesitate to contact us should you require further clarification or wish to discuss our recommendations. We remain available and would be pleased to discuss this topic with you in more detail.

Best regards,

On behalf of the Meijers Committee

A handwritten signature in blue ink, consisting of a stylized 'S' followed by a long horizontal line.

Dr. Sanne Buisman, Chair of the Meijers Committee