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NOTE

From:	Presidency
To:	Delegations
Subject:	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 – Revised Presidency text and explanatory note

In view of the Asylum Working Party meeting on 8 September 2025, delegations will find attached a revised draft of the abovementioned proposal, together with an explanatory note on the Presidency's revised text.

EXPLANATORY NOTE FROM THE PRESIDENCY

After a first presentation in June under the Polish Presidency, the proposal for a regulation amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept was discussed under the Danish Presidency at the meeting of the Asylum Working Party on 11 July 2025. At the end of these meetings, the Presidency invited Member States to submit written comments on the proposal.[1] In general, the Presidency noted strong support from delegations to remove regulatory obstacles in order to allow for a more effective application of the safe third contry concept in the future.

Based on the outcome of the above-mentioned meetings and in light of the written comments received from Member States, the Presidency has revised the text, as set out in the Annex below. Considering that we are unlikely to have another opportunity to revise the safe third country concept in the near future, the Danish Presidency believes that it is important that the Council takes a comprehensive approach, leading to a truly operational and future proof concept.

The purpose of this explanatory note is to provide delegations with additional information, clarifications and reasoning for the amendments proposed by the Presidency.

Article 1(1)(a) amending Article 59(5), point (b), first subparagraph

During the Asylum Working Party meeting on 11 July 2025, a broad majority of delegations expressed support for both the complete removal of the current connection criterion in the APR as well as the Commission's proposed alternatives to that requirement. As a compromise, the Presidency proposes to keep the revised Article 59(5)(b) and its optional alternatives in the proposal.

The Presidency has modified the proposed Article 59(5)(b), first subparagraph, and its accompanying recitals in a couple of respects.

First, the Presidency proposes no textual changes to point (i) of Article 59(5)(b) itself, which reproduces the existing wording of the current connection requirement. While presumably the scope of the criterion, as interpreted by the case-law of the Court of Justice of the European Union, will continue to apply, the Commission's explanatory memorandum also states that Member States will be free to determine what constitutes a 'connection' through its own law and practice; however, this

[1] The comments have been compiled in WK 8974/25 and WK 9958/25, respectively.

particular aspect is not reflected in the recitals or operative part of the proposal. In view of this, and in light of the fact that the provision is open to different interpretations due to the ambiguity inherent in the expression 'reasonable connection,' the Presidency proposes to amend the accompanying recitals with the aim of ensuring that the connection requirement is potentially applicable to a broad range of situations, subject to the objective standard of 'reasonableness' with regard to the connection required. The proposed revised recitals are set out in the Annex below.

Secondly, the Presidency also suggests to amend the recitals in order further clarify the meaning and scope of the criterion of transit. The Presidency considered it important to ensure that this provision unambiguously remains applicable in certain situations which could potentially give rise to some doubt. For example, a situation where an applicant has been in airside transit via an international airport in the third country may be the subject of possible ambiguity, as in such cases a person is often not formally admitted to the territory of the third country. Likewise, there may be situations where applicants have entered the territory of the Member States directly via the safe third country after a longer stay in that country, which, depending on the circumstances, may not qualify as a 'reasonable connection,' while at the same time also not necessarily coming within the ambit of a strict reading of the term 'transit.'[2] Given the underlying rationale of a transit criterion – that it is reasonable to expect an applicant to claim asylum in the first safe country they reach where they have had the opportunity to do so – the Presidency sees no compelling reason why such situations should not be covered. Therefore, proposed amendments to the recitals are set out in the Annex below. Alternatively, this issue could also be addressed by rewording point (b)(ii) of Article 59(5)(b) itself, or by introducing a definition of 'transit' in Article 3 APR.

Thirdly, point (b)(iii) provides that Member States may apply the safe third country concept on the basis of agreements or arrangements with a third country and sets out the conditions that have to be met by those agreements or arrangements. At previous meetings at the Asylum Working Party, a significant number of the Member States seemed to agree that the phrase 'agreement or an arrangement' should be interpreted broadly, so as to avoid limiting the type of instruments that may form the basis for Member States' safe third country schemes. The Presidency proposes to add some further clarification in the recitals, as set out in the Annex below.

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[2] The European Migration Network's Asylum and Migration Glossary defines 'transit' as 'passage through a country of transit of a third-country national *travelling from their country of origin to an EU Member State.*' (emphasis added).

Moreover, based on the clear view of the Member States expressed during the discussions so far, the Presidency has extended the scope of point (b)(iii) to also explicitly cover EU agreements or arrangements. Aside from the parties to the agreements or arrangements, the provision contains only the requirement for the agreement or arrangement to include a clause 'requiring the examination of the merits of the requests for effective protection' made by applicants subject to the agreement/arrangement.

In this respect, the Presidency notes that the existing text could give rise to some ambiguity as to whether the third State would be required to examine, without exception, the substance of applications for international protection of each and every individual transferred under an agreement/arrangement. But safe third country schemes may vary from one context to another. In some cases, a third country may be prepared to grant applicants asylum on a *prima facie* basis or provide some other form of permanent residence or legal stay – meeting the criteria of effective protection – without requiring an individual refugee status determination procedure first. In other cases, some applicants, following the transfer to the safe third country, may decide not to seek asylum in the third country and instead depart voluntarily to their home country.

The Presidency has therefore taken a slightly different approach. It should be recalled that to be considered a safe third country, the country in question must provide for the possibility to request and receive protection and effectively protect against the removal and expulsion in breach of the principle of *non-refoulement*. In the view of the Presidency, what is important is that access to the asylum procedure and a requisite level of protection in the third country are ensured. Indeed, the notion that access to an effective asylum procedure is sufficient for third country removals is supported by certain practice of States operating 'safe country' policies[3] and UNHCR guidelines.[4] To enhance procedural flexibility, point(b)(iii) is therefore modified in order to clarify that the agreement or arrangement should only oblige the receiving third State to examine the asylum

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[3] See, e.g., Art. 9(1) of the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Republic of Rwanda for the provision of an asylum partnership to strengthen shared international commitments on the protection of refugees and migrants ('In the case of a Relocated Individual *who raises an asylum or Humanitarian Protection Claim once they are in Rwanda*, Rwanda shall ensure that at all times it shall treat each Relocated Individual … in accordance with the Refugee Convention and this Agreement.') (emphasis added).

[4] UNHCR, International Agreements for the Transfer of Refugees and Asylum-seekers, 7 August 2025, para. 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, para. 9.

requests on the merits *if* such requests are made to the relevant authorities of that country upon arrival.

Article 1(1)(b) amending Article 59(5), point (b) (proposed second and third subparagraph)

The Presidency's revised text includes three amendments to the two new subparagraphs of Article 59(b) set out in the Commission's proposal.

First, the broadening of point (b)(iii) to encompass cases of EU agreements or arrangements required an addition to the proposed Article 59(5)(b). In practice, a situation could occur where agreements or arrangements by the Union and the Member States are concluded with the same third country, which may differ from one another with respect to the respective obligations of the Parties, the categories of persons to whom the agreements apply, etc. This could give rise to a scenario in which a conflict arises between an EU agreement/arrangement and a Member State's existing bilateral undertaking, which would raise questions as to the relation between the two instruments. The current proposal contains no indications in this respect.

To address such a situation, the Presidency proposes to include a 'non-affection clause,' which would provide that the conclusion of an agreement or arrangement between the Union and a third country is without prejudice to the parallel application of agreements or arrangements of the Member States with the same third country, provided that the Union and Member States agreements or arrangements at issue have the same material scope of application. This would ensure that the provisions of Member States' agreements or arrangements may complement those afforded by an EU agreement, so that the Member States can make full use of the relevant provisions of both type of agreements when applying the safe third country concept in EU law. At the same time, it will be important to ensure that such a clause is formulated in a manner which ensures full respect for the principle of the primacy of EU law, in accordance with the principles outlined in the case law of the Court of Justice of the European Union. To ensure this, the drafting could still be fine-tuned to accommodate further legal considerations that might be raised during the discussions.

Secondly, the proposed first subparagraph requires Member States to inform the Commission and the other Member States prior to concluding agreements or arrangements with third countries (the 'transparency clause'). As indicated by the Commission, the rationale behind this proposed transparency obligation is to support a comprehensive approach in the external dimension of migration, ensure the efficient functioning of the Dublin system, and for the Commission to be able to assess, on an *ex-ante* basis, the compliance of agreements with the requirements of the APR. One

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Member State furthermore argued for the necessity of obtaining the prior consent of Member States that may be specially affected by agreements or arrangements with neighbouring third countries, which, due to their close geographic proximity to the Union, could entail a potential risk of migratory pressure emanating from the territories of such third countries.

While those views are consequential in some respects, a significant number of Member States nonetheless expressed the clear view that the paragraph should be amended to oblige Member States to notify only *after* the signing and conclusion of the arrangement or agreement in question. Since that view better aligns with the legitimate sovereign choices and foreign policy interests of the Member States, the Presidency proposes to amend the subparagraph in question accordingly, by providing that Member States should notify the other Member States and the Commission *before the agreement or arrangement takes effect*. However, as a compromise, additional wording providing for optional *ex ante* transparency could be included in the text, should the Member States so wish. The Presidency has included such a drafting suggestion in square brackets in the Annex below.

It should in any case be noted that the above is without prejudice to the principle of sincere cooperation laid down in Article 4(3) TEU, which may translate into a duty to consult on the matter with the Commission and the other Member States in the Council, depending on the specific circumstances.

Additionally, the Presidency considers it important that the clause in question be interpreted as an independent obligation, meaning that a failure to notify should not constitute a procedural defect that would render the entire agreement or arrangement at issue void or inapplicable at the level of Union law. For greater certainty, this could potentially be set out in the recitals.

Thirdly, the proposed second subparagraph of Article 59(5) concerns the issue of unaccompanied minors. The Presidency notes that the content of the first sentence of that subparagraph is, in substance, very similar to existing provisions of the APR, notably Articles 22 and 59(6). Therefore, in the interest of clarity, the Presidency proposes to delete the first sentence, as it considers this aspect already adequately addressed by paragraph 6 of Article 59 in particular.

The second sentence of that subparagraph explicitly excludes unaccompanied minors from transfers under point (b)(iii). The Presidency believes that the Union's deterrence and resilience to irregular migration would be most effectively reinforced by a provision that applies, in principle, to all asylum applicants in the EU. In particular, the Presidency believes that Member States should be

careful not to elevate certain policy choices to the status of binding legal obligations, by proscribing measures at the level of Union law which is not prohibited by international law.

Thus, while it may only rarely be the case that a transfer of a unaccompanied minor to a safe third country would be in line with international obligations, in particular the principle of the best interests of the child, the Presidency nonetheless proposes to replace the second sentence of the second paragraph with a new provision, establishing that Member States may transfer an unaccompanied minor on the basis of an agreement og arrangement only where this is in accordance with general principles of Union law as well as with international law. In the interest of simplicity, this addition has been inserted as a new sentence in paragraph 6 of Article 59, in order to keep all the rules relating to unaccompanied minors grouped together in one paragraph.

Other pontential consequential amendments to Article 59

With a view to ensure the effectiveness and practical operability of the safe third country concept, the Presidency believes that it may be considered whether further aspects of Article 59, apart from the above, should be modified in light of the proposed changes brought about from the Commission's proposal.

Paragraph 7

Although some Member States, in view of the modifications to paragraph 5, point (b) introduced by the Commission's proposal and the inclusion of the possibility of transfers based on EU agreements, expressed the view that there could be a need to amend paragraph 7 of Article 59, the Presidency sees no material conflict as such between the proposed paragraph 5, point (b)(iii), and paragraph 7. While the new paragraph 5, point (b)(iii) (as amended in the revised Presidency text) authorises Member States to apply the safe third country concept on the basis of, *inter alia*, EU agreements, paragraph 7 creates a presumption of safety where such an EU agreement has been concluded, without that presumption, however, affecting the fulfilment of the conditions set out in paragraphs 5 and 6.

Accordingly, the Presidency proposes to leave paragraph 7 unaltered.

Paragraph 8

Article 59(8)(b) APR provides that, where an application has been rejected as inadmissible as a result of the application of the concept of safe third country, the Member States shall provide the applicant with a document informing the authorities of the third country in question, in the language

of that country, that the application has not been examined in substance as a consequence of the application of the concept of safe third country.

Contemporary 'safe third country' policies and practices demonstrate that third country cooperation agreements often include provisions on procedures and modalities for advance notification of the transfer of applicants to the receiving third country.[5] In such situations, the obligation established in paragraph 8, point (b), could be an unnecessary administrative burden for the Member States, especially where a safe third country scheme is established on a larger scale. The proposed redrafting of this paragraph set out in the Annex below is therefore intended to ensure that where an agreement concluded between the Union or one or more Member States and a third country provides for specific operating procedures concerning the advance notification of transfers to the third county, Member States should be able to use such procedures *instead* of Article 59(8).

Any additional measures needed to avoid and counter potential abuse?

In practice, the safe third country concept has been infrequently used by the Member States.[6] If the present amending proposal leads to a more widespread application of the safe third country concept among the Member States, it will be crucial to ensure that the safe third country rules and related procedural safeguards are not circumvented or outright abused by prospective applicants, especially where it could have the potential to lead to an increase in unfounded asylum applications. The Commission's proposal already addresses this aspect to some extent, by providing for changes to the rules on appeals and suspensive effect and setting out that Member States may take certain measures to address the risk of applicants absconding.

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5 See, e.g., Article 8 of the Agreement between the Government of Canada and the Government of the United States of America for cooperation in the examination of refugee status claims from nationals of third countries, 5 December 2002, available at: https://www.canada.ca/en/immigration-refugees-citizenship/corporate/mandate/policies-operational-instructions-agreements/agreements/safe-third-country-agreement/final-text.html.

6 See, e.g., EUAA, Applying the Concept of Safe Countries in the Asylum Procedure, December 2022, available at: https://euaa.europa.eu/sites/default/files/publications/2022-12/2022_safe_country_concept_asylum_procedure_EN.pdf; ECRE, Admissibility, responsibility and safety in European asylum procedures, September 2016, available at: https://ecre.org/wp-content/uploads/2016/09/ECRE-AIDA-Admissibility-responsibility-and-safety-in-European-asylum-procedures.pdf.

The Member States are invited to provide their views on whether there are any further elements, in addition to the proposed changes outlined above, that may be needed in order to avoid and counter any possible abuse of the safe third country concept?[7]

Article 1(2) amending Article 68(3), point (b)

The Commission proposal extends Article 68(3)(b) APR to also cover inadmissibility decisions taken on the basis of the safe third country concept, meaning that the appeals against such decisions are no longer granted automatic suspensive effect. Instead, an applicant must request a court or tribunal to suspend the enforcement of the decision pending the outcome of his or her appeal. However, the Commission's explanatory memorandum notes that this is without prejudice to the automatic suspensive effect of appeals lodged against related return decisions where there is a risk of breaching the principle of *non-refoulement.*

For the successful implementation and practical effectiveness of any safe third country scheme, it will be vital that cases can be processed expeditiously and removals to the third country enacted swiftly. In light of this, many Member States in the Asylum Working Party have called for clarity and the 'alignment' of this proposal's procedural provisions om remedies with those of the recent Commission proposal for a new return regulation.

In the Staff Working Document accompanying the present proposal, the Commission submits that 'ECtHR case law requires that the suspensive effect must be automatic for the return decision if there is an Article 3 ECHR claim'; therefore, it is concluded that the 'automatic suspensive effect must be maintained for the related return decision insofar as there is a claim of risk of refoulement,' with the Commission adding that this is in line with the return regulation proposal. In the Presidency's view, the relevant enquiry is therefore whether Member States' international obligations impose an absolute obligation to guarantee an automatically suspensive remedy in cases where an applicant (merely) alleges a risk under Article 3 ECHR upon removal, or whether it may suffice that the possibility exists of granting such suspensive effect where an 'arguable claim' of a risk of *refoulement* in the country of destination is presented, provided that the request for

[7] A potential example could be an abusive reliance on the automatic right conferred by Article 59(9) APR concerning the re-entry and access to the asylum procedure in a Member State following the unsuccessful application of the safe third country concept

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suspensive effect itself has automatic suspensive effect until at decision has been rendered on the request.[8]

The Presidency considers that this issue is particularly relevant in the context of inadmissibility decisions taken on the basis of the safe third country ground, where any *refoulement* claim with regard to removal to the safe third country is likely to be non-arguable – provided, of course, that the criteria for safe third country status are fully met. However, as this is a question which falls within the province of the return *acquis*, it is not a matter that properly falls to the Asylum Working Party to address. Instead, the Presidency encourages delegations to coordinate efforts with their return colleagues in the IMEX working party currently negotiating the proposal for a new return regulation, in order to ensure a principled and workable approach – also for safe third country removals.

Lastly, as suggested by one Member State, the Presidency's revised text adds inadmissibility decisions taken pursuant to Article 38(1)(c) (i.e., where an applicant has been granted international protection in another Member State) to the list of decisions covered by Article 68(3), point (b).

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8 See e.g., the view of Prof. Dr. Thym in the expert opinion cited by the Commission in the Staff Working Document: Daniel Thym, Expert Opinion on Legal Requirements for Safe Third Countries in Asylum Law and Practical Implementation Options, April 2024, pp. 33-34. See also e.g., *Čonka v. Belgium*, Judgment of 5 February 2002, European Court of Human Rights, Application no. 51564/99, para. 79; *Jabari v. Turkey*, Judgment of 11 July 2000, European Court of Human Rights, Application no. 40035/98, para. 50; *M.S.S. v Belgium and Greece*, Judgment of 21 January 2011, European Court of Human Rights Application no. 30696/09, para. 288.

ANNEX

REVISED PRESIDENCY TEXT[9]

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Article 1

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

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

(a) **paragraph 5,** 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 **on the way to the Union**; **or******

iii) there is an agreement or an arrangement **concluded between the Union or one or more Member States and** ~~with~~ the third country concerned requiring the examination of the merits of ~~the~~ **any** requests for effective protection ~~made~~ **lodged in the third country** by applicants ~~subject to~~**covered by** that agreement or arrangement.'*

*Suggested reformulation of accompanying recital 2:

(2) The existence of a connection between the applicant and the safe third country is not required by international refugee law, notably the Geneva Convention, or international human rights law, notably the European Convention on Human Rights. Therefore, Member States should have the possibility to apply the concept of safe third country where no connection can be established between the applicant and the safe third country concerned, provided that a~~n~~ **legally binding** agreement or

[9] Modifications in relation to the Commission's proposal are marked by **bold and underlining**. Deletions are marked by ~~strikethrough~~.

a non-binding formal or informal arrangement **has been concluded** with the third country concerned […].

**Suggested reformulation of accompanying recital 3:

(3) Member States should have the possibility to apply the safe third country concept on the basis of a connection**, as defined in national law in light of the parameters outlined in the case law of the Court of Justice of the European Union,** between the applicant and the third country concerned, by which it would be reasonable for the applicant to go to that third country. **The connection between the applicant and the safe third country could include in particular that members of the applicant's family are present in that country, that the applicant has settled or stayed in that country, or that the applicant has linguistic, cultural or other similar ties with that country.**

***Suggested reformulation of accompanying recital 4:

(4) Member States should also have the possibility to apply the safe third country concept to applicants who transited through the territory of a third country before entering the Union, as it is reasonable to expect that a person seeking international protection could have applied for protection in a safe third country through which that person transited. Previous transit through a safe third country provides an objective link between the applicant and the third country concerned. **Transit through a third country could include the situations where the applicant has been in a transit zone of a third country or otherwise had the possibility at the border of a third country to request effective protection with the authorities of that country, or where the applicant has arrived directly to the territory of the Member States after having stayed on the territory of a third country.**

(b) the following two subparagraphs are added:

'**Except where Union or Member States agreements or arrangements provide otherwise, an agreement or arrangment concluded by the Union and a third country pursuant to the first subparagraph, point (b)(ii), shall be without prejudice to any corresponding provisions of bilateral or multilateral**

agreements or arrangements which have been or may be concluded between individual Member States and that third country, in so far as those agreements or arrangements concern matters falling within the scope of the Union 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, point (b)(iii), shall not apply where the applicant is an unaccompanied minor.~~

[Before concluding any bilateral agreement or arrangement as referred to in the first subparagraph, point (b)(iii), Member States may consult the Commission as to the compatibility of the agreement or arrangement with Union law.]Member States shall inform the Commission and the other Member States ~~prior to concluding~~ **of** an**y** **bilateral** agreement**s** or arrangement**s** ~~as referred to in~~**concluded in accordance with** the first **sub**paragraph, point (b)(iii)**, prior to their entry into force, or, where an agreement or arrangement is to be applied provisionally, before the beginning of its provisional application**.'**;**

(c) in paragraph 6, the following sentence is added to the end of the paragraph:

'**Member States may only apply paragraph 5, point (b)(iii), to unaccompanied minors in so far as as this is consistent with the obligations of the Member States under the Charter, the Union asylum *acquis* and international law, including the principle of the best interests of the child.';**

(d) in paragraph 8, point (b), the following sentence is added:

'**, unless the transfer procedure and modalities provided for in an agreement or arrangement with the third country as referred to in paragraph 5, point (b)(iii), make this unnecessary.';**

(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), **(c),** (d) or (e), or Article 38(2), except where the applicant is an unaccompanied minor subject to the border procedure.'

Article 2

This Regulation shall enter into force on the -day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

Done at Brussels,

For the European Parliament	*~~f~~**F**or the Council*
The President	*The President*

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