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NOTE

From:	General Secretariat of the Council
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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 - General approach

Delegations will find below the Presidency's compromise text on the abovementioned proposal, in preparation of the Justice and Home Affairs (JHA) Council on 8-9 December 2025.

Additions as compared to the Commission's proposal appear in ***bold italic*** and deletions in ~~strikethrough~~. As regards the changes introduced specifically to paragraph 8 of Article 59, which was not included in the Commission's proposal, the additions as compared to the current text in Regulation (EU) 2024/1348 appear in ***bold italic underlined***.

2025/0132 (COD)

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

PUBLIC

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 78(2), point (d), thereof

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinions of the European Economic and Social Committee,

Having regard to the opinions of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) 2024/1348 of the European Parliament and of the Council[1] establishes~~ed~~ a common procedure for granting and withdrawing international protection in the Union. The Commission has reviewed the various elements of the concept of safe third country, including criteria of safety, due process, the connection criterion and the provisions on effective remedy. The review led to the conclusion that there was scope for improving the applicability of the safe third country concept while preserving the legal safeguards for applicants and ensuring the respect of fundamental rights.

(2) ***When applying the concept of safe third country as a ground for inadmissibility, Regulation (EU) 2024/1348 requires the existence of a connection between the applicant and the third country, on the basis of which it would be reasonable for the applicant to go to that country. However,*** ~~T~~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, ***under the conditions*** provided ~~that an agreement or arrangement with the third country concerned requires the examination of the merits of requests for effective protection made by applicants subject to that agreement or arrangement.~~***for in Regulation (EU) 2024/1348 as amended by this Regulation.***

[1] Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU (OJ L, 2024/1348, 22.5.2024, ELI: http://data.europa.eu/eli/reg/2024/1348/oj).

(3) Member States should ~~have~~***retain*** the possibility to apply the safe third country concept on the basis of a connection between the applicant and the third country concerned, by which it would be reasonable for the applicant to go to that third country. ***While taking fully into consideration the parameters outlined in the case law of the Court of Justice of the European Union, Member States should be able to apply the safe third country concept on the basis of a connection as defined in conformity with national law or practice, in so far as specifically defined therein. The connection between the applicant and the third country could be considered established in particular where members of the applicant's family are present in that country, where the applicant has settled or stayed in that country, or where the applicant has linguistic, cultural or other similar ties with that country.***

(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. ***For the purposes of this Regulation, transit through a third country could include the situation where an applicant has passed through, or stayed on, the territory of a third country on the way to the Union, or where the applicant has been at the border or in a transit zone of a third country, where he or she has had the possibility to request effective protection with the authorities of that country.***

PUBLIC

(4a) Due to a need to strengthen cooperation with third countries on addressing irregular migration to the Union, Member States should also have the possibility to apply the safe third country concept on the basis of a legally binding agreement or a non-binding arrangement, regardless of their formal designation, concluded by the Union or by the Member States with the third country concerned, provided that the agreement or arrangement contains provisions requiring the examination of the merits of any requests for effective protection made in that third country by applicants subject to the agreement or arrangement. The examination of the requests by the competent authorities of the third country with which the Union or the Member States have concluded an agreement or arrangement could include a variety of case-processing modalities, such as simplified, group or prima facie procedures.

PUBLIC

(4b) With a view to ensuring closer Union-wide coordination and increasing leverage and cooperation in dialogues with third countries, this Regulation should enable Member States to apply the safe third country concept to applicants under agreements or arrangements to which the Union, one or more of its Member States or one or more Member States and third countries, on the one hand, and a safe third country, on the other hand, are parties. In the interest of effectiveness and avoiding incompatibilities, as the subject matter of such agreements may fall within the shared competence of the Union and of the Member States, the Commission and the Member States should cooperate closely when concluding agreements falling within the scope of this Regulation, with a view to ensuring unity in the international representation of the Union and its Member States. In particular, in addition to, and without prejudice to, the procedure set out in Article 218 of the Treaty on the Functioning of the European Union, the Commission should, during the negotiations of an international agreement with a third country, take due account of any existing bilateral or multilateral agreement of a Member State with the same third country and the consequences of the Union agreement for that agreement and for the cooperation and overall relations of the Member State with that third country in the field of migration, including as regards the political and economic matters at stake.

PUBLIC

(5) In view of the situation of vulnerability of unaccompanied minors and of the need for targeted support, the concept of safe third country should be applied to unaccompanied minors only where a connection or transit can be established with the third country concerned ~~can be established~~ and the conditions of Article 59(6) of Regulation (EU) 2024/1348 of the European Parliament and of the Council are fulfilled. Member States should ensure that the best interests of the child are a primary consideration in all decisions concerning minors. ***Member States should also take due account of the principle of family unity when applying the safe third country concept.***

(6) It is necessary to enhance transparency regarding the conclusion by Member States of agreements and arrangements with safe third countries, to support Member States and the Commission in establishing a comprehensive approach on the external dimension of migration, and in coordinating their efforts towards third countries for applying the safe third country concept. This would also allow for monitoring whether agreements or arrangements with third countries fulfil the conditions set by ***Regulation (EU) 2024/1348 as amended by*** this Regulation. It should also enable a more consistent and coherent application of the safe third country concept across the Union and contribute to the overall well-functioning of the Common European Asylum System. To this end, ***upon the conclusion of an agreement or arrangement with a third country,*** Member States should be required to inform the Commission and other Member States ~~prior to the conclusion~~ of ***such*** agreements or arrangements ~~with third countries~~ ***before they are provisionally applied, or enter into force, whichever is the earliest.***

PUBLIC

(6a) In order to ensure that the legitimate interests linked to the management of the external borders and the internal security of the Member States concerned are sufficiently protected, in circumstances where a Member State negotiates an agreement or arrangement for the purposes of this Regulation with one of the Union's neighbouring third countries, the Member States that share a common border with that third country should, at an appropriate time before the conclusion of the agreement or arrangement, be informed of those negotiations, in full respect of the principle of sincere cooperation laid down in Article 4(3) of the Treaty on European Union. In addition, to avoid any non-compliance with Union law and to further enhance transparency with regard to agreements or arrangements between Member States and third countries, Member States should also be able, on a voluntary basis, to keep the Commission and other Member States informed of the progress of negotiations with a third country relating to agreements or arrangements authorised by this Regulation, before final agreement has been reached by the parties, including with a view to seeking the Commission's assessment as to the compatibility of the envisaged agreement or arrangement under negotiation with Union law.

(7) Member States should be able to take the necessary measures to address the risk that applicants to whom the safe third country concept is being applied abscond, including by restricting freedom of movement pursuant to Article 9 of Directive (EU) 2024/1346 of the European Parliament and of the Council[2], or detaining the applicant concerned in accordance with Article 10 thereof, in order to assess the admissibility of applications.

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[2] Directive (EU) 2024/1346 of the European Parliament and of the Council of 14 May 2024 laying down standards for the reception of applicants for international protection (OJ L, 2024/1346, 22.5.2024 , ELI: http://data.europa.eu/eli/dir/2024/1346/oj).

(7a) Regulation (EU) 2024/1348 provides that, where an application is rejected as inadmissible on the basis of the concept of safe third country, the determining authority should provide the applicant with a document informing the authorities of the third country that the application has not been examined in substance as a consequence of the application of the concept of safe third country. The Union and its Member States might conclude in the future such agreements or arrangements as authorised by this Regulation, which might include provisions on procedures for informing the authorities of the third country of the transfer of applicants from the territory of the Member States to the third country that are different to the procedure provided for in Regulation (EU) 2024/1348. Consequently, where the safe third country concept is being applied with regard to a third country with which the Union or a Member State has concluded such an agreement or arrangement, it should be possible to apply a procedure set out in the relevant provisions of that agreement or arrangement instead of the one laid down in Regulation (EU) 2024/1348.

(8) To enhance procedural efficiency, the applicant should not have an automatic right to remain on the territory of a Member State for the purpose of an appeal against inadmissibility decisions taken on the basis of the safe third country concept***. In addition, there should be no automatic right to remain on the territory of a Member State where an appeal is lodged against a decision rejecting an application as inadmissible on the basis that a Member State other than the Member State in which the appeal is lodged has granted the applicant international protection***. Nonetheless, the enforcement of the corresponding return decision is to be suspended during the time limit within which the person concerned can exercise his or her right to an effective remedy before a court of first instance and when such appeal is lodged where there is a risk of breach of the principle of non-refoulement.

PUBLIC

(9) Since the objective of this Regulation, namely the revision of the conditions for the application of the safe third country concept, cannot be sufficiently achieved by the Member States and can only be achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union (TEU). In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.

(10) ~~[~~In accordance with Article 3 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Ireland has notified~~[~~, by letter of ~~…~~***22 July 2025***,~~]~~ its wish to take part in the adoption and application of this ~~[act~~***Regulation***.~~]~~

~~OR~~

~~[In accordance with Articles 1, 2 and Article 4a(1) of Protocol No 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice, annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, and without prejudice to Article 4 of that Protocol, Ireland is not taking part in the adoption of this [act] and is not bound by it or subject to its application.]~~

PUBLIC

(11) In accordance with Articles 1 and 2 of Protocol No 22 on the position of Denmark annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

(12) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(13) Regulation (EU) 2024/1348 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

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;

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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 ~~with~~ ***concluded between the Union, one or more Member States or one or more Member States and third countries, on the one hand, and*** the third country concerned***, on the other hand,*** requiring the examination of the merits of ~~the~~ ***any*** requests for effective protection made ***in the third country*** by applicants ~~subject to~~ ***covered by*** that agreement or arrangement.***';***

(b) the following ~~two~~ ***four*** subparagraphs are added:

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

'Where the Commission enters into negotiations on behalf of the Union with a third country with a view to concluding an agreement as referred to in the first subparagraph, point (b)(iii), it shall take any existing bilateral or multilateral agreements of the Member States with that third country into account in the course of the negotiations, including the potential impact of the Union agreement on those agreements and on the Member States' cooperation with the third country in the field of migration.

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An agreement concluded by the Union and a third country falling within the scope of the first subparagraph, point (b)(iii), shall take precedence over any bilateral or multilateral agreements or arrangements concluded between individual Member States and the same third country, in so far as their provisions are incompatible with those of that agreement.

A Member State shall, at an appropriate time, inform the relevant Member States of negotiations on an agreement or arrangement as referred to in the first subparagraph, point (b)(iii), with a third country that shares a common border with those Member States.

Member States shall inform the Commission and the other Member States ***of any bilateral or multilateral agreements or arrangements concluded in accordance with the first subparagraph, point (b)(iii),*** prior to ~~concluding~~ ***their entry into force, or, where*** an agreement or arrangement ~~as referred to in the first paragraph, point (b)(iii)~~***is to be applied provisionally, before the beginning of its provisional application. The Commission and the other Member States shall also be informed of any subsequent changes to, or the termination of, such agreements or arrangements.';***

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

'Member States shall not apply paragraph 5, point (b)(iii), where the applicant is an unaccompanied minor.';

PUBLIC

(d) paragraph 8, point (b) is replaced by the following:

'(b) provide him or her 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, unless a different procedure for informing the authorities of the third country is set out in an agreement or arrangement between the Union or that Member State and the third country as referred to in paragraph 5, point (b)(iii).';

(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~~For the Council*
The President *The President*