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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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Subject: Draft REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulation (EU) 2024/1348 as regards the application of the concept of safe third country **(first reading)**  
- Adoption of the legislative act  
= Statements

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**Spain has requested that the following statement be entered in the Council minutes**

1. Spain is committed to the implementation of the European Pact on Migration and Asylum. This Pact represents a historic milestone in the development of a comprehensive EU policy and legal framework for asylum and migration management. Regulation (EU) 2024/1348 establishing a common procedure for international protection (APR) constitutes a key component of that legal framework.
2. Spain does not support this proposal to amend the APR for four reasons, relating to legislative, legal, external relations and operational aspects.

3. Firstly, the Regulation undermines the integrity of the Pact. It involves an amendment to the European Pact on Migration and Asylum even before it begins to apply in June 2026. This amendment is being introduced before we have been able to ascertain whether the new legal framework as a whole and, in particular, the new provisions on the safe third country concept already included in the APR as agreed on at the end of 2023, function properly. Moreover, it involves an amendment to one of the elements that proved particularly sensitive in reaching an overall agreement, namely the safe third country concept. Lastly, this proposal cannot be assessed in isolation, but rather in close connection with the proposal for a Return Regulation and the return hubs envisaged therein. Spain remains critical of such repatriation centres in third countries.
4. Secondly, Spain raises legal concerns regarding the inclusion in the text of the possibility of concluding non-binding arrangements in this area. Such arrangements do not make it possible to ensure respect for the rights and obligations of applicants who will be transferred to a third country. There is no guarantee that effective protection will be afforded to those applicants in accordance with Union and international law. Furthermore, if such arrangements are not binding, the question arises of how Member States and third countries could be obliged to comply with them. By explicitly providing for the possibility for the Union itself to conclude non-binding arrangements or agreements with third countries in this area, all of the Member States are assuming a high level of responsibility and an unacceptable risk. In addition, there is a high risk of litigation owing to potential breaches of the principle of non-refoulement enshrined in the Charter of Fundamental Rights of the European Union and in the European Convention on Human Rights. The legal risks also extend to the possible impact on the rules for determining responsibility. In this respect, it cannot be excluded that transfers between Member States under the Asylum and Migration Management Regulation may be suspended, given the possibility that national courts may consider that persons cannot be transferred to countries that have signed such agreements.

5. Thirdly, the conclusion of agreements of this nature by the Union or by other Member States with third countries neighbouring Spain has a direct impact on Spain's bilateral relations with those countries. The text provides for a prior information mechanism for Member States sharing a common border. However, this wording would exclude key neighbouring countries for Spain, with which other Member States could conclude agreements without having informed and consulted Spain.
6. Fourthly, at operational level, Spain has serious doubts about its effectiveness and efficiency. The fact that the connection criterion is optional raises questions regarding the sustainability of the mechanism. In the absence of a family, social or economic link, Spain wonders what incentive a transferred person would have not to attempt to return to the Union when their prospects in an unknown third country are limited. Moreover, if some Member States apply the connection criterion and others do not, it would lead to a fragmented system rather than a common one. The cost-benefit of such a measure is also questionable. No minimally objective cost-benefit analysis has been carried out. However, similar existing examples have already demonstrated their high cost and limited results.
7. In the light of the above, Spain **OPPOSES** the adoption of this Regulation as proposed.

**France has requested that the following statement be entered in the Council minutes**

France is voting against the adoption of the Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the 'safe third country' concept. In changing the application of the concept of safe third country in the way in which it does, this text poses significant operational, legal and political risks both for Member States which choose not to apply the connection criterion and for Member States which do not make such a choice and, a fortiori, will not be able to do so.

By removing the connection criterion as a mandatory requirement and allowing, in its place, the possibility of concluding agreements or arrangements with third countries, the text calls into question the delicate balances struck in the framework of the Pact on Migration and Asylum and, as such, poses a risk to the implementation of the latter:

- it may lead to an increase in secondary movements, a risk it was not possible to assess in advance of the presentation of the legislative revision due to the absence of a prior impact assessment;
- it may interfere with transfers between Member States under the Dublin mechanism, and consequently under Regulation (EU) 2024/1351 of 14 May 2024 on asylum and migration management;
- this results in particular from the possibility of concluding ‘arrangements’, which, being non-binding in nature, will not allow the Member State to have all the guarantees needed in order to ensure that the asylum seeker will benefit, in the third country to which the Member State responsible intends to return him or her, from the level of protection required by the concept of safe third country, notably effective access to such protection.

Lastly, France reiterates its opposition to such agreements or arrangements resulting in financing by the EU, in particular through the external action funds.