



CDDH-PTS(2025)03REV
28/02/2025

**STEERING COMMITTEE FOR HUMAN RIGHTS
(CDDH)**

DRAFTING GROUP ON THE SAFE THIRD COUNTRY CONCEPT

(CDDH-PTS)

DISCUSSION PAPER

I. Introduction

1. The present document has been prepared to facilitate discussions at the first meeting of the CDDH Drafting Group on the Safe Third Country Concept (CDDH-PTS).

2. The terms of reference of the Steering Committee for Human Rights (CDDH) for 2024–2027 were adopted by the Committee of Ministers more than 25 years after the adoption of the Committee of Ministers' Recommendation No. R(97)22 (1997 Recommendation)¹ containing guidelines on the application of the safe third country concept. The work of the CDDH provides an opportunity for member States to assess the need for and the feasibility of updating the 1997 Recommendation in light of developments in the jurisprudence of the European Court of Human Rights (the Court) and other relevant international standards. This assessment includes determining whether there is a need to update the standards reflected in the 1997 Recommendation, to address gaps, and to refine existing standards.

3. This paper outlines the developments that have taken place since the adoption of the 1997 Recommendation with a view to identifying options for consideration by the CDDH-PTS in preparing a study on the need for and feasibility of updating the 1997 Recommendation in accordance with its terms of reference.

II. Background information

4. The safe third country concept is based on the premise that an applicant for international protection could have sought and obtained such protection in a country that is neither the country of origin nor the country in which they are currently seeking protection.

5. International law does not explicitly define or regulate the safe third country concept. While the 1951 UN Convention Relating to the Status of Refugees and its 1967 Protocol guarantee the right to seek asylum,² they do not specify where this right may or should be exercised.

6. Within the Council of Europe, the safe third country concept has been addressed through the 1997 Recommendation, which provides guidelines for its application. The preamble to the 1997 Recommendation explains its purpose, including the importance of agreement amongst Council of Europe member States on common principles, the need to avoid asylum-seekers being sent successively from one state to another without any of these states considering their claim (the phenomenon of “refugees in orbit”), the need to provide appropriate and effective protection for those in need of it, and the need to establish the conditions under which an asylum-seeker may be removed to another country in which it is considered that they should apply for asylum.

7. The operative provisions of the recommendation then outline criteria for assessing whether a country can be considered as a safe third country to which an asylum-seeker can be sent. These are: observance by that state of relevant international human rights standards and of international principles relating to the protection of refugees, as embodied in the 1951 Convention and the 1967 Protocol relating to the Status of Refugees; protection against *refoulement* and the possibility to seek and enjoy asylum; and whether the individual has already been granted refugee

¹ [Recommendation No. R \(97\) 22](#) of the Committee of Ministers to member States containing guidelines on the application of the safe third country concept, 25 November 1997.

² See [1951 Convention](#) relating to the Status of Refugees and 1967 Protocol relating to the Status of Refugees.

status in the third country, has had the opportunity to seek protection in it, or would, on the basis of clear evidence, be admissible to it.³

III. Developments since the Adoption of the 1997 Recommendation

1. Jurisprudence of the European Court of Human Rights

8. Since the adoption of the 1997 Recommendation, the Court has issued several key judgments that have shaped the application of the safe third country concept. These judgments address fundamental aspects such as asylum seekers' rights, the principle of non-*refoulement*, access to asylum procedures, and the conditions in designated safe third countries. The Court's case-law has also clarified the obligations of states under the European Convention on Human Rights (the Convention) when applying this concept.

9. In *Ilias and Ahmed v. Hungary*, the Grand Chamber ruled that it is the duty of the removing state to thoroughly evaluate whether there is a real risk that an asylum seeker would be denied access to an "adequate asylum procedure" in the third country that protects them from *refoulement*. This includes protection from being removed, directly or indirectly, to their country of origin without a proper evaluation of the risks faced under Article 3 of the Convention. If the guarantees in the third country are deemed insufficient, the removing state has an obligation under Article 3 of the Convention not to transfer the asylum seeker there.⁴ This examination "must precede the removal to the third country".⁵ All of these principles were confirmed in the recent judgement rendered in *H.T. v. Germany and Greece*.⁶

10. The Court has elaborated on procedural obligations, stressing that when applying the safe third country concept, removing states must:

- i) "conduct a thorough examination of the relevant conditions in the third country concerned and, in particular, the accessibility and reliability of its asylum system",⁷
- ii) "carry out of their own motion an up-to-date assessment, notably, of the accessibility and functioning of the receiving country's asylum system and the safeguards it affords in practice" and that "[t]he assessment must be conducted primarily with reference to the facts which were known to the national authorities at the time of expulsion but it is the duty of those authorities to seek all relevant generally available information to that effect."⁸ The Court further clarified that the removing state "cannot merely assume that

³ [Recommendation No. R \(97\) 22](#), para. 1 a., b., c. and d.

⁴ See *Ilias and Ahmed v. Hungary* [GC], appl. no. 47287/15, 21 November 2019, paras. 130-138. The Court held that: "in all cases of removal of an asylum seeker from a Contracting State to a third intermediary country without examination of the asylum requests on the merits, regardless of whether the receiving third country is an EU Member State or not or whether it is a State Party to the Convention or not, it is the duty of the removing State to examine thoroughly the question whether or not there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against *refoulement*. If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the asylum seekers should not be removed to the third country concerned."

⁵ See *Ilias and Ahmed v. Hungary*, *op.cit.*, para. 137.

⁶ See *H.T. v. Germany and Greece*, appl. no. 13337/19, 15 October 2024, paras. 137-140.

⁷ See *Ilias and Ahmed v. Hungary*, *op.cit.*, para. 139, citing *M.S.S. v. Belgium and Greece* [GC], appl. no. 30696/09, 21 January 2011, paras. 344-359 and 365-368.

⁸ See *Ilias and Ahmed v. Hungary*, *op.cit.*, para. 141, citing *Sharifi v. Austria*, appl. no. 60104/08, 5 December 2013, paras. 31 and 32.

the asylum seeker will be treated in the receiving third country in conformity with the Convention standards but, on the contrary, must first verify how the authorities of that country apply their legislation on asylum in practice”⁹ and

- iii) ensure that asylum seekers are given “sufficient opportunity” to demonstrate that the third country is not a safe third country in their specific case.¹⁰ In this respect, the Grand Chamber held that the burden of proof cannot rest entirely on the applicant.¹¹

11. The Court has also clarified states’ responsibility to assess risks in the third country, including potential violations of Article 3 of the Convention due to inadequate reception conditions or living conditions for asylum seekers, conditions of detention¹² and lack of individual guarantees that reception facilities in the receiving state will accommodate persons with specific vulnerabilities in need of special protection.¹³

12. For instance, in *M.S.S. v. Belgium and Greece*, the Court found “the applicant’s conditions of detention and living conditions in Greece degrading,” “that these facts were well known before the transfer of the application and were freely ascertainable from a wide number of sources,” and that “[b]ased on these conclusions and on the obligations incumbent on the States under Article 3 of the Convention in terms of expulsion, the Court considers that by transferring the applicant to Greece the Belgian authorities knowingly exposed him to conditions of detention and living conditions that amounted to degrading treatment.”¹⁴ In *Tarakhel v. Switzerland*, the Court held that “were the applicants to be returned to Italy without the Swiss authorities having first obtained individual guarantees from the Italian authorities that the applicants would be taken charge of in a manner adapted to the age of the children and that the family would be kept together, there would be a violation of Article 3 of the Convention.”¹⁵

13. The Court held that failure to discharge the procedural obligation under Article 3 of the Convention to assess the risks of treatment contrary to that provision prior to removing asylum-seekers to a third intermediary country constitutes a violation of Article 3.¹⁶

14. In the recent judgement rendered in *H.T. v. Germany and Greece*, the Court concluded that the asylum seeker’s removal from Germany to Greece violated Article 3:

“notably the fact that at the relevant time (i) there was an insufficient basis for a general presumption that the applicant would, following his removal from Germany to Greece, have access to an adequate asylum procedure in Greece, protecting him against *refoulement*, and would not risk being exposed to treatment contrary to Article 3 there; (ii) neither the administrative arrangement on the basis of which the

⁹ See *Ilias and Ahmed v. Hungary*, *op.cit.*, para. 141, citing *M.S.S. v. Belgium and Greece*, *op.cit.*, para. 359.

¹⁰ See *Ilias and Ahmed v. Hungary*, *op.cit.*, paras. 148.

¹¹ See *M.S.S. v. Belgium and Greece*, *op.cit.*, para. 352 stating that “the applicant should not be expected to bear the entire burden of proof.”

¹² See *Ilias and Ahmed v. Hungary*, *op.cit.*, para. 131; See *M.S.S. v. Belgium and Greece*, *op.cit.*, paras. 362-36; See also *H.T. v. Germany and Greece*, *op.cit.*, para. 139.

¹³ See *Tarakhel v. Switzerland* [GC], appl. no. 29217/12, 4 November 2014, paras. 100-122; See also *Ali and Others v. Switzerland and Italy*, appl. no. 30474/14, 4 October 2016, para. 32; *Ojei v. The Netherlands*, appl. no. 64724/10, 14 March 2017, para. 35, 40-43.

¹⁴ See *M.S.S. v. Belgium and Greece*, *op.cit.*, paras. 366 and 367.

¹⁵ See *Tarakhel v. Switzerland*, *op.cit.*, para. 122.

¹⁶ See *H.T. v. Germany and Greece*, *op.cit.*, para. 140 citing *Ilias and Ahmed v. Hungary*, *op.cit.*, paras. 163-164.

applicant was removed nor an individual assurance provided for any guarantees that asylum-seekers removed under that arrangement would, following their removal, have access to an effective asylum procedure in Greece in which the merits of their asylum claim would be assessed, and that asylum-seekers removed under that arrangement, would not be exposed to treatment contrary to Article 3 in Greece on account of, for example, conditions of detention or living conditions for asylum-seekers; (iii) the German authorities had not demonstrated that they had assessed such risks before removing the applicant to Greece; and (iv) the applicant was hastily removed without having access to a lawyer prior to his removal.”¹⁷

15. The CDDH-PTS may consider whether developments in the Court’s case-law are such as to imply a need to update the 1997 Recommendation with respect to:

- i) assessing the risks faced by asylum seekers in third countries, including the adequacy of asylum procedures and protection against *refoulement*;
- ii) proactively taking into account general information on third country asylum systems and provide asylum seekers with sufficient opportunity to challenge the safety of a third country in their specific case;
- iii) assessing risks of treatment contrary to Article 3 in the receiving state, including reception conditions, conditions of detention or living conditions, and inadequate reception conditions not adapted to their specific vulnerabilities; and
- iv) obtaining assurances from the receiving third country, in light of the specific vulnerabilities of the person transferred to that third state.

2. Global Developments in Refugee Law and Policy

16. Since 1997, the global legal and policy framework on refugees and asylum seekers has also developed in response to evolving migration challenges.

17. The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol remain central to international refugee protection, but do not explicitly address the safe third country concept. Under the Convention, the primary responsibility for providing protection rests with the country where an asylum claim is lodged. However, refugees do not have an absolute right to choose their asylum country,¹⁸ though their preferences should be taken into account.¹⁹

18. The UNHCR’s Executive Committee (ExCom)²⁰ has stated that refugees and asylum seekers who move irregularly from a country where they have already been granted protection may be returned to that country if they are protected there against *refoulement* and if they are permitted to remain there and to be treated in accordance with recognised basic human standards until a durable solution is found for them.²¹ Furthermore, if an individual who did not request asylum has an existing connection or close links with another state, he or she may, if it appears fair and reasonable, be called upon first to request asylum from that state.²²

¹⁷ See [H.T. v. Germany and Greece](#), *op. cit.*, para. 150.

¹⁸ See UNHCR, [Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers](#), May 2013, para. 3(i).

¹⁹ See [ExCom Conclusion No. 15](#) (XXX): Refugees Without an Asylum Country, 1979, para. (h) (iii).

²⁰ The [Executive Committee of the High Commissioner’s Programme](#) (ExCom) consists of 110 member states, and advise on international protection through the adoption of conclusions.

²¹ See [ExCom Conclusion No. 58](#) (XL): Problem of Refugees and Asylum-Seekers who move in an Irregular Manner from a Country in which they had already found Protection, 1989, para. (f) (i) and (ii).

²² See [ExCom Conclusion No. 15](#) (XXX): Refugees Without an Asylum Country, 1979, para. (h) (iv).

19. In 2018, UNHCR issued general considerations on the application of the safe third country concept, summarising its position in light of international law and practice.²³ The CDDH-PTS may assess whether the 1997 Recommendation should be updated to reflect UNHCR guidelines and best practices. These considerations underline the following:

- If a person has already obtained international protection in a previous state, and that protection remains accessible and effective, the application of the safe third country concept “requires an individual assessment of whether the refugee will be readmitted to the ‘first country of asylum’, granted lawful stay there, and be accorded standards of treatment commensurate with the 1951 Convention and its 1967 Protocol and international human rights standards, including – but not limited to - protection from *refoulement*.”²⁴
- If the safe third country concept is applied where a person could have or can find protection in a third state - either in relation to a specific individual case or pursuant to a formal bilateral or multilateral agreement – the transferring state must individually assess whether the third state will:
 - i) “(re)admit the person,
 - ii) grant the person access to a fair and efficient procedure for determination of refugee status and other international protection needs,
 - iii) permit the person to remain while a determination is made, and
 - iv) accord the person standards of treatment commensurate with the 1951 Convention and international human rights standards, including – but not limited to - protection from *refoulement*.
 - v) Where she or he is determined to be a refugee, s/he should be recognised as such and be granted lawful stay.”²⁵

20. UNHCR has emphasised that even when transfers or relocations of refugees or asylum seekers occur under bilateral or multilateral arrangements, pre-transfer individual assessments remain essential, especially for vulnerable groups such as unaccompanied and separated children, with the best interests of the child being given primary consideration.²⁶

²³ See [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.

²⁴ See [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. 3, citing in particular [ExCom Conclusion No. 58](#) (XL): Problem of Refugees and Asylum-Seekers who move in an Irregular Manner from a Country in which they had already found Protection, 1989, para. (f); [ExCom Conclusion No. 85](#) (XLIX): International Protection, 1998, para. (aa); and UNHCR, [Guidance Note on Bilateral and/or multilateral transfer arrangements of asylum-seekers](#), May 2013, para. 3(vi).

²⁵ See [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. 4 citing [ExCom Conclusion No. 85](#) (XLIX): International Protection, 1998, para. (aa); UNHCR, [Guidance Note on Bilateral and/or multilateral transfer arrangements of asylum-seekers](#), May 2013, para. 3(vi).

²⁶ See [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. 5 citing Article 3 of the Convention on the Rights of the Child, 2 September 1990, 1577 UNTS 3; UNHCR, [UNHCR Guidelines on Determining the Best Interests of the Child](#), May 2008; UN Committee on the Rights of the Child (CRC), General comment No. 6 (2005): [Treatment of Unaccompanied and Separated Children Outside their Country of Origin](#), 1 September 2005, CRG/GC/2005/6.

21. Regarding the connection between an asylum seeker and a third country, UNHCR has clarified that such a connection is not a mandatory requirement under international law. However, UNHCR's Executive Committee underlined that a person may be called upon to request asylum from a state which he or she has a connection or close links with, if it appears fair and reasonable.²⁷ The link between the asylum seeker and the third country must be "meaningful."²⁸ Factors to be taken into consideration include the length and nature of any previous stay, connections through family or other close ties, which are essential for enhancing the feasibility of return or transfer from the perspective of both the individual and the state.²⁹

22. UNHCR has also set criteria regarding access to and level of protection in the third country. To be considered a safe third country, the country in question must provide asylum seekers with access to treatment standards aligned with the 1951 Refugee Convention, its 1967 Protocol and international human rights norms,³⁰ particularly guaranteeing protection from *refoulement* and access to pursue gainful employment to enable the progressive achievement of self-reliance.³¹ Before determining whether an individual qualifies for international protection, upon return or transfer to the third country the person needs to be granted access to a fair and efficient asylum procedure and be authorised to remain in the country until a final determination of his or her asylum claim is rendered.³² Until then, asylum seekers should have lawful stay in the state³³ as well as access to sufficient means of subsistence to maintain an adequate standard of living.³⁴

23. The 2018 UN Global Compact on Refugees (GCR) aims to enhance international cooperation, responsibility-sharing, and sustainable solution for refugees.³⁵ While the GCR does not explicitly mention the concept of safe third country, it stresses the importance of expanding legal and safe pathways for refugees, including third country solutions, to access protection and durable solutions. Specifically, the GCR highlights the role of complementary pathways for admission to third countries, such as family reunification, educational opportunities and labour mobility in providing lawful stay in third countries.³⁶

²⁷ See [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. 6 citing [ExCom Conclusion No. 15](#) (XXX): Refugees Without an Asylum Country, 1979, para. (h) (iv).

²⁸ See [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. 6.

²⁹ See [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. 6.

³⁰ See [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. 7, citing [ExCom Conclusion No. 87](#) (L): The Protection Situation, 1999, para. (I).

³¹ See [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. 8.

³² See [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.

³³ See UNHCR, [Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention](#), 2012, para. 13.

³⁴ See [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 citing Article 11 of the International Covenant on Economic, Social and Cultural Rights; UNHCR, [Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice](#) – Detailed Research on Key Asylum Procedures Directive Provisions, March 2010, p. 283.

³⁵ See [UN Global Compact on Refugees](#), 2018.

³⁶ See [UN Global Compact on Refugees](#), 2018, pp. 37-38.

24. Since the late 1990s, various states have entered into bilateral and regional agreements regulating asylum transfers under the safe third country concept. Notable examples include the 2016 EU-Türkiye Statement, which facilitated the return of asylum seekers from Greece to Türkiye, and the 2022 UK-Rwanda Asylum Partnership.³⁷

25. These agreements have been controversial with human rights organisations raising concerns over compliance with non-*refoulement* obligations and international protection standards. In some cases, UNHCR has found that refugees or asylum seekers were transferred or relocated under bilateral or multilateral agreements without individual assessments.³⁸

26. In 2023, the UK Supreme Court ruled the UK-Rwanda transfer policy was unlawful, citing concerns that Rwanda could not be considered a safe third country due to past instances of *refoulement*. In 2024, the UK Government decided to scrap the policy to transfer asylum seekers to Rwanda.³⁹

27. The 2016 EU-Türkiye Statement sought to address irregular migration into Europe by returning asylum seekers arriving in Greece to Türkiye, with case-by-case assessments ensuring compliance with EU and international law. However, implementation faced logistical, legal and political challenges. By 2019, only a small number of individuals had been returned to Türkiye under the agreement, and the resettlement mechanism failed to meet expected targets.

28. Designing a country as a safe third country has proven challenging in practice. For example, the implementation of Greece's ministerial decision to designate Türkiye as a safe third country for asylum seekers from Afghanistan, Bangladesh, Pakistan, Somalia and Syria resulted in asylum applicants being left in limbo when Türkiye was not accepting returns.⁴⁰

29. The EU- Türkiye Statement has also faced legal scrutiny before the Court of Justice of the European Union (CJEU). The CJEU addressed whether a member State can classify a third country as safe when that country has suspended asylum admissions or readmissions. In a 2024 judgment, the CJEU ruled that while a member State may generally designate a third country as safe, it must ensure that each asylum seeker still has access to a procedure for the examination of his or her application for international protection. If readmission to the designated safe third country is not feasible, the member State cannot declare an application inadmissible on the basis of the safe third country concept.⁴¹

3. Evolving EU Legislation and Practice

³⁷ In April 2022, the United Kingdom and Rwanda entered into the Migration and Economic Development Partnership, commonly referred to as the UK-Rwanda Asylum Partnership. Under this agreement, the UK planned to transfer certain asylum seekers to Rwanda, where the Rwandan government would process their asylum claims. If granted asylum, individuals would receive protection in Rwanda.

³⁸ See UNHCR [Guidance Note on bilateral and/or multilateral transfer arrangements of asylum-seekers](#), May 2013.

³⁹ See UNHCR, [Experts welcome announcement to end UK-Rwanda asylum partnership](#), 10 July 2024.

⁴⁰ See European Union Agency for Fundamental Rights (FRA), Bulletin on [Migration: Key fundamental rights concerns](#), 2021, p. 6, citing UNHCR, [UNHCR's Position and Recommendations on the Safe Third Country Declaration by Greece](#), 2 August 2021.

⁴¹ See Court of Justice of the European Union, [Somateio "Elliniko Symvoulío gia tous Prosfyges" and Astiki Mi Kerdoskopiki Etaireia « Ypostirixi Prosfygon sto Aigaio » v. Ypourgos Exoterikon and Ypourgos Metanastefsis kai Asyloú](#), Case C-134/23, 4 October 2024, para. 54.

30. Since the adoption of the 1997 Recommendation, the European Union (EU) legislation and its approach to the safe third country concept have evolved significantly.

31. The right to seek asylum in EU member States is enshrined in Article 18 of the Charter of Fundamental Rights of the European Union.⁴² Additionally, the 2013 Dublin Regulation establishes the criteria for determining which EU member State is responsible for examining an asylum application, generally designating the country of first arrival as responsible.⁴³

32. Under EU Law, an EU member State may return an applicant to another country for the examination of his or her application, provided that the receiving country is considered safe and that certain safeguards are respected.

33. The recast 2013 EU Directive on Asylum Procedures introduced a legal framework defining the conditions under which a third country can be considered as “safe” for asylum procedures.⁴⁴ The Directive requires that national authorities be satisfied that an asylum seeker is not at risk of threats to life, liberty, or exposure to torture or serious harm in the third country, and that he or she will not face onward *refoulement* to an unsafe country.⁴⁵ The Directive also sets out four key criteria for designating a safe third country:

- i) A “connection” between the applicant and the third country must exist, “on the basis of which it would be reasonable for that person to go to that country”,
- ii) The presumption of safety must be applied on a case-by-case basis, and
- iii) “Allowing an individual examination of whether the third country concerned is safe for a particular applicant”,
- iv) The designation of a country as safe and the existence of a connection between the applicant and the third country can be challengeable by the applicant.⁴⁶

34. Following the recent adoption of the EU Pact on Migration and Asylum, a new Asylum Procedures Regulation was adopted in 2024 and is set to come into force by mid-2026. Under the new Asylum Procedures Regulation, transfers to a safe third country will only be permitted following an admissibility procedure conducted on EU territory, ensuring that applicants have access to legal remedies. Furthermore, by 12 June 2025, the European Commission must review the concept of safe third country and propose any necessary amendments.⁴⁷

35. The 2024 Regulation broadens the applicability of safe country clauses, introducing four key changes:⁴⁸

- i) The evaluation of the safety assessment when applying the safe third country concept,

⁴² Article 18 of the [European Union Charter of Fundamental Rights](#).

⁴³ See [Regulation \(EU\) No 604/2013](#) of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member State responsible for examining an application for international protection lodged in one of the member States by a third-country national or a stateless person (recast) (Dublin Regulation).

⁴⁴ [Directive 2013/32/EU](#) of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast).

⁴⁵ See [Directive 2013/32/EU](#), Article 38 (1).

⁴⁶ See [Directive 2013/32/EU](#), Article 38 (2) (a), (b) and (c).

⁴⁷ [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, Article 77.

⁴⁸ See European Parliament, [Briefing of the European Parliament on Safe third country concept in the EU pact on migration and asylum](#), 2024, p. 3. See [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.

- ii) The clarification of the connection requirement when an applicant can be returned to a designated safe third country,
- iii) The option for EU member States to designate a third country as safe with territorial limitations or to exclude certain vulnerable groups from such a designation, and
- iv) The creation of a common EU list of safe third countries, in addition to national lists.⁴⁹

36. The Court of Justice of the European Union (CJEU) has issued several rulings on the application of the safe third country concept. In particular, the CJEU has clarified that an asylum seeker cannot be returned to a safe third country solely based on transit through that country. Transit alone does not establish a sufficient connection to justify declaring an asylum application inadmissible under the safe third country principle.⁵⁰ This ruling recalls UNHCR's legal considerations on the application of the safe third country concept, stating that the link between the asylum seeker and the third country must be "meaningful"⁵¹ before such a designation can be applied. The CJEU also ruled that a personal interview must be conducted with applicants for international protection before an inadmissibility decision is made.⁵²

4. Developments within the Council of Europe (other than the Court)

37. In 2009, the Committee of Ministers adopted the Guidelines on human rights procedures in the context of accelerated asylum procedures, which include a specific section on the safe third country concept. The Guidelines outline the criteria that must be met when applying the concept, namely:

- i) The third country has ratified and implemented the 1951 Refugee Convention and its 1967 Protocol or equivalent legal standards and other relevant international human rights treaties,
- ii) The principle of non-*refoulement* is effectively respected,
- iii) Asylum seekers have access to a full and fair asylum procedure in the third country with a view to determining his or her need for international protection, and
- iv) The third country will admit the asylum seekers.⁵³

38. The Guidelines further emphasise that all asylum seekers must be provided with an effective opportunity to rebut the presumption of the third country's safety. Moreover, applying the safe third country concept does not exempt a state from its obligations under Article 3 of the Convention.⁵⁴

⁴⁹ See European Parliament, [Briefing of the European Parliament on Safe third country concept in the EU pact on migration and asylum](#), 2024 p. 1.

⁵⁰ See Court of Justice of the European Union, [LH v. Bevándorlási és Menekültügyi Hivatal](#), case C-564/18, 19 March 2020; [FMS and Others v. Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság](#), joined cases C-924/19 & C-925/19, 14 May 2020, paras. 158-160 where the Court concluded that transit cannot constitute a connection for the purpose of declaring an application for asylum inadmissible on the basis of a safe third country.

⁵¹ See [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. 6.

⁵² See Court of Justice of the European Union, [Milkiyas Addis v. Bundesrepublik Deutschland](#), Case C-517/17, 16 July 2020.

⁵³ Committee of Ministers, [Guidelines on human rights procedures in the context of accelerated asylum procedures](#), 1 July 2009, VI. The safe third country concept.

⁵⁴ Committee of Ministers, [Guidelines on human rights procedures](#), 1 July 2009, VI. The safe third country concept.

39. In 2020, the Council of Europe and the European Union Agency for Fundamental Rights (FRA) published “Fundamental rights of refugees, asylum applicants and migrants at the European borders,” which includes a section on returning asylum seekers to safe third countries. It reiterates that member States must not expose individuals to a real risk of death, torture or inhumane or degrading treatment or punishment, persecution or serious violation of other fundamental rights. This principle applies when returning an asylum seeker to a third country. The report also highlights that the removing state must conduct a “rigorous and up-to-date assessment, notably of the accessibility and functioning of the receiving country’s asylum system and the safeguards in practice.”⁵⁵

40. In July 2022, the Parliamentary Assembly Committee on Migration, Refugees and Displaced Persons adopted a report on “Safe third countries for asylum seekers.”⁵⁶ The report found that the practice of states in applying the concept varies widely, with divergent presumptions of safety.

41. On the basis of this report, the Parliamentary Assembly adopted Resolution 2461 (2022), in which it expressed concern about the tendency to return or transfer asylum seekers to third countries without properly establishing the safety of the respective country, the legality of the return, and the existence and availability of certain objective standards of protection.⁵⁷ Recognising that significant legal developments have occurred since the adoption of the 1997 Recommendation, including relevant case-law from the CJEU and the Court,⁵⁸ the Parliamentary Assembly called on member States to coordinate efforts to effectively protect asylum seekers’ human rights and the right to asylum in Europe. It called for the development of new and updated criteria within the Council of Europe to evaluate the safety of third countries.⁵⁹

42. Alongside this resolution, the Parliamentary Assembly adopted Recommendation 2238 (2022), in which it called on the Committee of Ministers to review the 1997 Recommendation in light of the Court’s relevant jurisprudence. It also called for the development of new standards to improve member States’ assessments of third countries’ safety and ensuring their regular updates.⁶⁰ The Recommendation further invited the Committee of Ministers to consider setting standards for the transfer, return, and readmission of asylum seekers and refugees while ensuring the effective protection of human rights under the Convention and their right to apply for asylum under international refugee law.⁶¹

⁵⁵ Council of Europe and the European Union Agency for Fundamental Rights, [Fundamental rights of refugees, asylum applicants and migrants at the European borders](#), 2020, p. 8.

⁵⁶ [Report on Safe third countries for asylum seekers](#), Committee on Migration, Refugees and Displaced Persons, by Rapporteur Stephanie Krisper, 07 July 2022.

⁵⁷ PACE, [Resolution 2461 \(2022\)](#) on Safe third countries for asylum seekers, para. 1.

⁵⁸ PACE, [Resolution 2461 \(2022\)](#) on Safe third countries for asylum seekers, paras. 5-7.

⁵⁹ PACE, [Resolution 2461 \(2022\)](#) on Safe third countries for asylum seekers, para. 8.

⁶⁰ PACE, [Recommendation 2238 \(2022\)](#) on Safe third countries for asylum seekers, para. 2.1.

⁶¹ PACE, [Recommendation 2238 \(2022\)](#) on Safe third countries for asylum seekers, para. 2.2.