

CDDH(2026)R104 Addendum 2
30 June 2026

STEERING COMMITTEE FOR HUMAN RIGHTS (CDDH)

**Study on the need for and the feasibility of updating Committee of Ministers'
Recommendation No. R(97)22 to member States containing Guidelines on the
Application of the Safe Third Country Concept**

(as adopted by the CDDH at its 104th meeting, 30 June – 3 July 2026)

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I. Introduction

Terms of reference and working methods

1. The CDDH [terms of reference for 2024-2027](#) require it to prepare a study on the need for and feasibility of updating the Committee of Ministers' Recommendation No. R(97) 22 to member States containing Guidelines on the application of the safe third country concept (1997 Recommendation).¹ The deadline for completing this study is 30 June 2026. At its 100th meeting (25-28 June 2024), the CDDH adopted terms of reference for the Drafting Group on the safe third country concept (CDDH-PTS), *inter alia*, to conduct preparatory work on the study.²
2. The CDDH-PTS held a total of four meetings between March 2025 and March 2026.
3. The CDDH-PTS also held a series of exchanges of views with experts:
 - at its first meeting, with Andreas WISSNER, then Representative to the European Institutions in Strasbourg, UNHCR, Elisa DE PIERI, Researcher, Europe Regional Office, Amnesty International, and Thomas STRAUB, Senior Lawyer, Registry of the European Court of Human Rights;
 - at its second meeting, with Nina BRENNAN,³ Policy Officer, Directorate General for Migration and Home Affairs (DG HOME), European Commission, Ophélie MARREL, Chair of ENNHRI Working Group on Asylum and Migration, ENNHRI – Legal Adviser at the *Commission nationale consultative des droits de l'homme* (CNCDH), and Eleonora TESTI, Senior Legal Officer, European Council on Refugees and Exiles (ECRE). In addition, the CDDH-PTS heard Andreas WISSNER presenting the new UNHCR guidance on “International agreements for the transfer of refugees and asylum-seekers,”⁴ and Christian MOMMERS, Adviser to the Office of the Council of Europe Commissioner for Human Rights, presenting the Commissioner’s new report on “Externalised asylum and migration policies and human rights law;”⁵ and
 - at its third meeting, with Professor Vincent CHETAIL, Professor of International Law and Director of the Global Migration Centre, Advisory Faculty, Global Governance Centre, Geneva Graduate Institute, Switzerland, and Professor Dr Daniel THYM, Professor of Public, European and International Law, Director of the Research Centre Immigration & Asylum Law, University of Konstanz, Germany.

II. Content and Scope of the 1997 Recommendation

4. The 1997 Recommendation was prepared by the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR). CAHAR was tasked with, *inter alia*, making proposals for the solution of practical and legal problems faced by states in the field of territorial asylum, refugees and stateless persons, and to draw up appropriate legal instruments “in the liberal and humanitarian spirit of the member states of the Council of Europe aiming at among others to settle the question of the countries of first

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, adopted by the Committee of Ministers on 25 November 1997 (“1997 Recommendation”). See Appendix 1.

² See [CDDH-PTS\(2025\)01](#).

³ A representative of the European Commission also provided updates on EU processes during the third and fourth meetings of the CDDH-PTS.

⁴ UNHCR, “[International Agreements for the Transfer of Refugees and Asylum-Seekers](#),” 7 August 2025.

⁵ Council of Europe Commissioner for Human Rights, “[Externalised asylum and migration policies and human rights law](#),” 4 September 2025.

asylum and of territorial asylum and to look into specific situations in the new host countries.”⁶ At the time, CAHAR recognised the need “to reach a common understanding on the problem of refugees and asylum-seekers who move from a country in which they had the opportunity to seek, or had already found, protection.”⁷

5. The 1997 Recommendation drew on, *inter alia*, the resolution on “host third countries,” guidelines established by the Ministers of the member States of the European Communities responsible for immigration in 1992,⁸ and relevant provisions of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European communities (Dublin Convention)⁹ and of ExCom Conclusions No. 15(XXX) on refugees without an asylum country¹⁰ and No. 58 (XL) on problems of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection.¹¹

6. According to the Explanatory Memorandum to the 1997 Recommendation,¹² the aim of the 1997 Recommendation is to indicate the conditions under which a country may be considered safe in order to provide appropriate and effective protection for asylum-seekers and refugees in need of it, and to ensure that asylum-seekers are given an opportunity to have their claims examined by one state. In each individual case, the third country should meet all the criteria that establish it as a safe third country for the asylum-seeker.¹³

7. The preamble of the 1997 Recommendation recalls the principles relating to asylum set out in the Convention for the Protection of Human Rights and Fundamental Freedoms (Convention), the 1948 Universal Declaration on Human Rights, the United Nations Declaration on Territorial Asylum and the Declaration on Territorial Asylum of the Council of Europe as well as the importance of the full implementation of the 1951 Geneva Convention relating to the Status of Refugees¹⁴ (1951 Refugee Convention) and the 1967 Protocol relating to the Status of Refugees¹⁵ (1967 Protocol). It also recognises the increasing complexity of asylum issues in member States and the importance of agreeing on common principles regarding certain aspects of asylum, and takes note of the problem of asylum-seekers being sent successively from one state to another without their asylum claims being examined. It underlines the need to ensure appropriate and effective protection for those in need.¹⁶

8. According to the preamble of the 1997 Recommendation, “where a member state considers that asylum-seekers should apply for asylum in the first or subsequent country in which they had an opportunity to do so, and where the asylum-seeker is to be removed to that country or sent to another country,” conditions need to be established under which such a country can be considered safe for the asylum-seeker.¹⁷

⁶ [Explanatory Memorandum](#) to Recommendation No. R (97) 22 of the Committee of Ministers to member states Guidelines on the application of the safe third country concept (“Explanatory Memorandum to the 1997 Recommendation”), para. 1. See Appendix 2.

⁷ *Ibid.*, para. 2.

⁸ [Council Resolution of 30 November 1992](#) on a Harmonised Approach to Questions Concerning Host Third Countries (“London Resolution”).

⁹ [Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities](#), 15 June 1990 (“Dublin Convention”).

¹⁰ [ExCom Conclusion No. 15 \(XXX\)](#): Refugees Without an Asylum Country, 1979.

¹¹ [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.

¹² See Appendix 2.

¹³ [Explanatory Memorandum](#) to the 1997 Recommendation, para. 7.

¹⁴ [Convention relating to the Status of Refugees](#), adopted on 28 July 1951 (“1951 Refugee Convention”).

¹⁵ [Protocol relating to the Status of Refugees](#), adopted le 18 November 1966 (“1967 Protocol”).

¹⁶ [1997 Recommendation](#), preamble.

¹⁷ [1997 Recommendation](#), preamble.

9. The guidelines adopted in the 1997 Recommendation list four cumulative criteria to assess whether a country may be considered as a safe third country for the purposes of returning an asylum-seeker:¹⁸

- a. the third country observes international human rights standards relevant to asylum as established in universal and regional instruments, including the prohibition of torture, inhuman or degrading treatment or punishment. The Explanatory Memorandum to the 1997 Recommendation clarifies that these standards must correspond to those contained in the applicable human rights instruments listed in the first paragraph of the preamble of the 1997 Recommendation (see above, paragraph 7 of this study). It also states that Council of Europe member States are under an obligation not only to respect the prohibition of torture, inhuman or degrading treatment or punishment on their own territory, but also to refrain from sending individuals to states where they would face treatment contrary to relevant articles of the Convention, regardless of whether the receiving state is a party to the Convention.¹⁹
- b. the third country observes international principles relating to the protection of refugees as set out in the 1951 Refugee Convention and its 1967 Protocol, with particular regard to the principle of *non-refoulement*. The Explanatory Memorandum to the 1997 Recommendation further clarifies that a third state is required to observe international protection principles, even if not a party to the 1951 Refugee Convention and its 1967 Protocol with special regard to the principle of *non-refoulement* as formulated in Article 33 of the 1951 Refugee Convention.²⁰
- c. the third country provides effective protection against *refoulement* and offers the possibility to seek and enjoy asylum. According to the Explanatory Memorandum to the 1997 Recommendation, the primary concern of “effective protection” is the personal safety of the asylum-seeker. This criterion is linked to the provision in the preamble stating that asylum-seekers should be given the opportunity to have their claims examined by one state.²¹
- d. the asylum-seeker either has already been granted effective protection in the third country or has had the opportunity, at the border or within the territory of the third country, to contact its authorities to seek protection before moving on to the member State where the asylum request was lodged; or, due to personal circumstances including prior relations with the third country, there is clear evidence of the admissibility of the asylum-seeker to that country. The Explanatory Memorandum to the 1997 Recommendation notes that these three are alternative conditions,²² at least one of which must be met. It further clarifies these conditions as follows:
 - i. the asylum-seeker has already been granted effective protection in the third country, and such protection, defined as ensuring the personal safety of the asylum-seeker, remains available upon their return to that country.
 - ii. the asylum-seeker had the opportunity, prior to arrival in the member State, to contact the authorities of the third country in order to seek protection there. The Recommendation does not prescribe the duration or nature of the stay or transit in the third country, noting that member States have different or no provisions by law in this regard.
 - iii. it is assessed that the asylum-seeker will be readmitted to the third country due to their personal circumstances, including prior relations to the third country,

¹⁸ *Ibid.*, para. 1.

¹⁹ [Explanatory Memorandum](#) to the 1997 Recommendation, para. 11.

²⁰ *Ibid.*, para. 12.

²¹ *Ibid.*, para. 13.

²² *Ibid.*, para. 14, i., ii., and iii.

which may include, for example, a valid residence permit or close family ties. Some states consider that, if all other criteria established in paragraph 1.a. to c. are met, these personal circumstances indicate clear evidence of admissibility to another country. This they deem satisfactory grounds for sending the asylum-seeker to that country.

10. The 1997 Recommendation calls on states to adopt modalities for informing the asylum-seeker and, as far as necessary and in accordance with existing data protection legislation – or, in the absence of such legislation, with the consent of the asylum-seeker – the authorities of the third country that, when a country is considered safe under the above conditions, applications for asylum are generally not examined on the merits.²³ The Explanatory Memorandum to the 1997 Recommendation explains that this provision seeks to prevent the asylum-seeker referred to a third country from being assumed to be a rejected asylum claimant in the sending country and, as a result of this assumption, treated accordingly.²⁴

11. The Explanatory Memorandum to the 1997 Recommendation adds that the guidelines do not make the consent of the third state concerned a prerequisite for removal. However, “successive expulsions” and “refugees-in-orbit” situations should be avoided, as they may represent a threat to the personal safety of the asylum-seeker and, in such cases, be incompatible with the principle of effective protection.²⁵

12. Finally, the Explanatory Memorandum to the 1997 Recommendation notes that the Recommendation does not address “burden-sharing” or issues faced by transit countries, and that none of its provisions preclude member States from offering broader rights or entitlements to asylum-seekers and refugees.²⁶

III. Developments in Standards Relevant to the Application of the Safe Third Country Concept

13. In 2022, the Parliamentary Assembly of the Council of Europe (PACE) adopted Recommendation 2238 (2022) on “Safe third countries for asylum seekers.” PACE recommended that the Committee of Ministers “review this [1997] Recommendation in the light of relevant jurisprudence of the European Court of Human Rights” (Court), “develop new standards to enable member States to improve their assessment of the safety of third countries,” “regularly update them in accordance with future legal developments and jurisprudence,” and “consider setting standards on the transfer, return and readmission of asylum seekers and refugees, taking due account of the effective protection of their human rights under the [Convention] and their right to apply for asylum under international refugee law.”²⁷

14. In response, the Committee of Ministers acknowledged in 2023 that there have been many legal developments since the adoption of the 1997 Recommendation, including standards relevant to the application of the safe third country concept, such as the 2009 Committee of Ministers Guidelines on human rights protection in the context of accelerated

²³ [1997 Recommendation](#), para. 2.

²⁴ [Explanatory Memorandum](#) to the 1997 Recommendation, para. 15.

²⁵ *Ibid.*, para. 16.

²⁶ *Ibid.*, paras. 17-18.

²⁷ [PACE Recommendation 2238 \(2022\)](#), “Safe third countries for asylum seekers,” adopted on 12 October 2022, paras. 2.1. and 2.2.

asylum procedures (2009 Guidelines).²⁸ In addition, the Committee of Ministers noted that since the adoption of the 1997 Recommendation, the Court has examined cases where asylum-seekers were sent to third countries.²⁹ The Committee of Ministers considered that these standards could form the basis of a study on the need for and feasibility of updating the 1997 Recommendation. The Committee of Ministers invited the CDDH to undertake this task, also bearing in mind PACE's recommendation regarding standards on the transfer, return and readmission of asylum-seekers.³⁰

1. Relevant Caselaw of the Court

15. Since the adoption of the 1997 Recommendation, the Court has delivered several key judgments in the context of the application of the safe third country concept, clarifying and giving further guidance in relation to states' obligations under the Convention when applying this concept.

16. With regard to Article 3 of the Convention, the Court has examined cases involving removal of an asylum-seeker to a third country, without the merits of their claim for protection having first been considered by the national authorities in the State Party concerned.³¹ In the circumstances of the relevant cases, the Court has indicated that it needs to ascertain whether the state authorities examined thoroughly if the applicants would have access to an adequate asylum process in the third country and sufficient guarantees against their direct or indirect removal to the country of origin without a proper evaluation of any risks they might face of a violation of their rights under Article 3 of the Convention.³² If it is established that the existing guarantees in this regard are insufficient, Article 3 implies a duty that the individual should not be removed to the third country concerned.³³ States must also ensure that the person removed to the third country will not be subject to a real risk of exposure to torture or inhuman or degrading treatment contrary to Article 3 in that country. This assessment must precede the removal to the third country.³⁴

17. The Court has further clarified that states are responsible for assessing risks in the third country, including potential violations of Article 3 due to inadequate reception or living conditions for asylum-seekers, conditions of detention,³⁵ and the lack of individual guarantees for persons with specific vulnerabilities in need of special protection.³⁶ These risk assessments must be conducted prior to any removal to a third country, and failure to comply with this procedural obligation constitutes a violation of the Convention.³⁷

²⁸ [Committee of Ministers Reply to Recommendation 2238 \(2022\)](#), "Safe third countries for asylum seekers," adopted on 29 November 2023, para. 2 citing Committee of Ministers [Guidelines on human rights protection in the context of accelerated asylum procedures](#), adopted on 1 July 2009 ("2009 Guidelines").

²⁹ *Ibid.*, para. 2.

³⁰ *Ibid.*, para. 3.

³¹ See [Ilias and Ahmed v. Hungary](#) [GC], appl. no. 47287/15, 21 November 2019, paras. 134 and 139-141; [Sherov and Others v. Poland](#), appl. nos. 54029/17 and 3 others, 4 April 2024, paras. 43-45; and [M.A and Z.R. v. Cyprus](#), appl. no. 39090/20, 8 October 2024, para. 90.

³² See [M.A and Z.R. v. Cyprus](#), *op. cit.*, para. 90.

³³ See [Ilias and Ahmed v. Hungary](#) [GC], *op. cit.*, para. 134.

³⁴ See [Ilias and Ahmed v. Hungary](#) [GC], *op. cit.*, para. 137, and [H.T. v. Germany and Greece](#), appl. no. 13337/19, 15 October 2024, paras. 137-140.

³⁵ See [Ilias and Ahmed v. Hungary](#) [GC], *op. cit.*, para. 131; See [M.S.S. v. Belgium and Greece](#), appl. no. 30696/09, 21 January 2011, paras. 366-367; See also [H.T. v. Germany and Greece](#), *op. cit.*, para. 139.

³⁶ See [Tarakhel v. Switzerland](#) [GC], appl. no. 29217/12, 4 November 2014, paras. 118-122; See also [Jihana Ali and Others v. Switzerland and Italy](#), appl. no. 30474/14, 4 October 2016, para. 32; [Justice Ojei v. The Netherlands](#), appl. no. 64724/10, 14 March 2017, paras. 35, 40-43.

³⁷ See [Ilias and Ahmed v. Hungary](#) [GC], *op. cit.*, paras. 163-164; [H.T. v. Germany and Greece](#), *op. cit.*, para. 140.

18. The Court has elaborated on states' procedural obligations under Article 3, underlining that when applying the safe third country concept, the sending state must:

- "conduct a thorough examination of the relevant conditions in the third country concerned and, in particular, the accessibility and reliability of its asylum system",³⁸
- "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."³⁹ The Court further clarified that the sending state "cannot merely assume that 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",⁴⁰
- ensure that the removal of asylum-seekers to a third country is not in breach of Article 3 because they would not be guaranteed access to reception facilities adapted to their specific vulnerabilities, which may require that the removing state obtains individual assurances from the receiving state to that end,⁴¹ and
- ensure that asylum-seekers are given "sufficient opportunity" to demonstrate that the third country is not safe in their specific case⁴² and where asylum-seekers have an "arguable complaint" that removal to a third country would expose them to treatment contrary to Article 3, they must have access to an effective remedy at the domestic level, in both law and practice. The Court held that in case of "any claim that there exist substantial grounds for fearing a real risk of treatment breaching Article 3, [...] it also requires that the person concerned should have access to a remedy with automatic suspensive effect."⁴³

19. Furthermore, the Court has consistently held that, for States parties to the Convention who are also EU Member States, they remain fully responsible under the Convention even when acting under EU law or under bilateral agreements. For States parties to the Convention which are also bound by relevant EU law, they must ensure that transfers comply with the Convention, and the Dublin Regulation does not justify indiscriminate removals.⁴⁴

20. The Convention does not prohibit States parties to the Convention from establishing lists of countries presumed to be safe. However, "any presumption that a particular country is "safe", if it has been relied upon in decisions concerning an individual asylum seeker, must be sufficiently supported at the outset by an analysis of the relevant conditions in that country and, in particular, of its asylum system."⁴⁵

2. Content and Scope of the 2009 Guidelines

³⁸ See *Ilias and Ahmed v. Hungary* [GC], *op. cit.*, para. 139 citing *M.S.S. v. Belgium and Greece*, *op. cit.*, paras. 344-359 and 365-368.

³⁹ See *Ilias and Ahmed v. Hungary* [GC], *op. cit.*, para. 141 citing *Sharifi v. Austria*, appl. no. 60104/08, 5 December 2013, paras. 31 and 32.

⁴⁰ See *Ilias and Ahmed v. Hungary* [GC], *op. cit.*, para. 141 citing *M.S.S. v. Belgium and Greece*, *op. cit.*, para. 359.

⁴¹ See *Tarakhel v. Switzerland* [GC], *op. cit.*, paras. 100-122.

⁴² See *Ilias and Ahmed v. Hungary* [GC], *op. cit.*, para. 148. See also *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."

⁴³ See *M.K. and Others v. Poland*, appl. nos. 40503/17, 42902/17 and 43643/17, 23 July 2020, para. 143. See also *CDDH-PTS(2025)05*, Key points made by Thomas Straub.

⁴⁴ See *Sharifi and Others v. Italy and Greece*, appl. no. 16643/09, 21 October 2024, para. 224 (not available in English) referring to *Hirsi Jamaa and Others v. Italy* [GC], appl. no. 27765/09, 23 February 2012, para. 179; *M.S.S. v. Belgium and Greece* [GC], *op. cit.*, paras. 338-340. Under bilateral agreements specifically, see *M.A. and Z.R. v. Cyprus*, appl. no. 39090/20, 8 October 2024, para. 91 referring to *Hirsi Jamaa and Others v. Italy* [GC], *op. cit.*, para. 129. See also *CDDH-PTS(2025)05*, Key points made by Thomas Straub.

⁴⁵ See *Ilias and Ahmed v. Hungary* [GC], *op. cit.*, para. 152.

21. The Committee of Ministers adopted the 2009 Guidelines with an invitation to member States to ensure their wide dissemination among all national authorities involved in the various stages of accelerated asylum procedures, including those responsible for the return of foreign nationals.⁴⁶ The 2009 Guidelines are based on the guarantees set out in the Convention and the obligation of states – regardless of the type of asylum procedure they apply – to comply with international and European standards in this field, and recall the relevant caselaw of the Court as well as recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the United Nations Committee against Torture (CAT).⁴⁷

22. The 2009 Guidelines include a section on the safe third country concept. They provide that specific criteria must be satisfied when applying this concept, namely:

- the third country has ratified and implemented the 1951 Refugee Convention and its 1967 Protocol or applies equivalent legal standards, as well as other relevant international human rights treaties;
- the principle of *non-refoulement* is effectively respected;
- the asylum-seeker concerned has access, in law and in practice, to a full and fair asylum procedure in the third country with a view to determining his or her need for international protection; and
- the third country will admit the asylum-seeker.⁴⁸

23. The 2009 Guidelines also provide that all asylum-seekers shall be given an effective opportunity to rebut the presumption of safety of the third country. Furthermore, the application of the safe third country concept does not relieve a state of its obligations under Article 3 of the Convention, which prohibits torture and inhuman or degrading treatment or punishment.⁴⁹

24. In addition, the 2009 Guidelines include a section dedicated to vulnerable persons and complex cases. The section states, *inter alia*, that the vulnerability of certain categories of persons, such as unaccompanied and/or separated minors/children, victims of torture, sexual violence or human trafficking and persons with mental and/or physical disabilities, should be duly taken into account when deciding whether to apply accelerated asylum procedures. Accelerated asylum procedures can include the application of the safe third country concept. In the case of children, their best interests are paramount. The 2009 Guidelines also stipulate that international human rights obligations as regards the rights of specific vulnerable groups shall be duly taken into account when applying accelerated asylum procedures and in the manner of their application.⁵⁰

⁴⁶ [2009 Guidelines](#), preamble, para. 1.

⁴⁷ *Ibid.*, preamble.

⁴⁸ *Ibid.*, VI. The safe third country concept, para. 1.

⁴⁹ *Ibid.*, VI. paras. 2-3.

⁵⁰ *Ibid.*, III. Vulnerable persons and complex cases, paras. 1-3.

IV. Issues examined by the CDDH

25. The CDDH discussed the scope of its work and identified five questions to be examined:

- (1) the alignment of the 1997 Recommendation and the Explanatory Memorandum to the 1997 Recommendation with developments in the Court's caselaw and the 2009 Guidelines;
- (2) the clarity and legal precision of the 1997 Recommendation and the Explanatory Memorandum to the 1997 Recommendation;
- (3) the relevance of today's geopolitical and different hybrid contexts;
- (4) the interplay with ongoing EU legislative developments; and
- (5) the level of detail appropriate for a Recommendation on the safe third country concept.

26. To inform its assessment of the need for and feasibility of an update, the CDDH examines each of these points.

1. Alignment with Developments in the Court's Caselaw and the 2009 Guidelines

27. The CDDH reviewed the content of the 1997 Recommendation in light of post-1997 caselaw of the Court and the 2009 Guidelines. The CDDH considers that since the adoption of the 1997 Recommendation, the Court's caselaw has developed and the 2009 Guidelines were adopted, both of which have an impact on the application of the safe third country concept. The CDDH is of the opinion that these developments are relevant in any assessment of the need to update the 1997 Recommendation and/or the Explanatory Memorandum to the 1997 Recommendation and in any further work should the Recommendation and/or its Explanatory Memorandum be updated.

1.1. Examination of the Inclusion of Relevant Post-1997 Judgments delivered by the Court

28. The CDDH first examined whether relevant post-1997 judgments of the Court containing procedural obligations are sufficiently reflected in the 1997 Recommendation.

29. The two academic experts consulted by the CDDH-PTS discussed the potential for updating the text of the Recommendation in line with developments in the Court caselaw. One viewed a revision as useful for codifying and capturing extensive developments made before the Court and clarifying guiding principles in light of subsequent practice.⁵¹ The other expert, highlighting that the debate concerns politically sensitive and legally controversial areas, noted that an update might have very limited impact on EU Member States. While he recognised that for non-EU Member States an update could be useful for them and for capturing developments in a coherent, analytical manner, he cast doubt as to whether an update would have a great added value.⁵²

30. The CDDH recognises that an important question is whether the 1997 Recommendation continues to provide adequate guidance on contemporary standards, particularly in light of developments in the Court's jurisprudence.⁵³

⁵¹ See [CDDH-PTS\(2026\)01](#), Discussions (Prof Vincent Chetail's views).

⁵² See [CDDH-PTS\(2026\)01](#), Key Points made by Prof Daniel Thym.

⁵³ See [CDDH-PTS\(2025\)05](#), Discussions.

31. The CDDH acknowledges that the Recommendation was adopted in 1997, almost thirty years before certain relevant developments occurred in the Court's caselaw and a number of judgments have since been delivered by the Court concerning the application of the safe third country concept (see above, Section III., 1. of this study).⁵⁴

32. The CDDH further observes that the 1997 Recommendation provides guidance on general principles and criteria applicable to the safe third country concept,⁵⁵ whereas subsequent jurisprudence of the Court has clarified procedural obligations and safeguards linked to the rights of individuals under the Convention, including further guidance to member States on how to ensure effective remedies and safeguards and on the application of the requirement of "special protection" in the context of particularly vulnerable persons.⁵⁶

33. The CDDH also notes that, at the time of preparing the present study, several cases are pending before the Court which may be of relevance to the application of the safe third country concept and could provide potential guidance to States parties to the Convention.⁵⁷

1.2. Examination of the 2009 Guidelines

34. The CDDH notes that the 1997 Recommendation was adopted over a decade before the adoption of the 2009 Guidelines.

35. While the 1997 Recommendation contains a set of general principles and criteria applicable to the safe third country concept in particular, the 2009 Guidelines provide guidance on the broader topic of accelerated asylum procedures, addressing the safe third country concept in this context (see above, Section III., 2. of this study). In particular, the 2009 Guidelines offer additional details, including on the opportunity to rebut the presumption of safety. The CDDH acknowledges that, unlike the 1997 Recommendation, the 2009 Guidelines explicitly address vulnerable persons, including unaccompanied and/or separated minors and children, victims of torture, sexual violence or human trafficking and persons with mental and/or physical disabilities whose vulnerability should be duly taken into account and, in the case of children, their best interests are paramount.

2. Clarity and Legal Precision of the 1997 Recommendation

36. The CDDH examined whether the text of the 1997 Recommendation is sufficiently clear and legally precise for its main addressees.

37. First, the CDDH reviewed the content of paragraph 1.a-1.d of the 1997 Recommendation.⁵⁸ The CDDH notes that the 1997 Recommendation sets out cumulative criteria on the application of the safe third country concept, in particular:

⁵⁴ See [CDDH-PTS\(2025\)05](#), Key points by Thomas Straub.

⁵⁵ See also [CDDH-PTS\(2025\)12](#), Key points made by Christian Mommers, describing the principles contained in the 1997 Recommendation as "general." See also [CDDH-PTS\(2025\)12](#), Key points made by Andreas Wissner, describing the 1997 Recommendation as a "high-level" instrument.

⁵⁶ See [Tarakhel v. Switzerland](#) [GC], *op. cit.*, paras. 118-119 citing [M.S.S. v. Belgium and Greece](#), *op. cit.*, para. 251 and [Popov v. France](#), appl. nos. 39472/07 and 39474/07, 19 January 2012, paras. 91 and 102.

⁵⁷ [R.A. and Others v. Poland](#), appl. no. 42120/21, lodged on 20 August 2021 and communicated on 27 September 2021; [H.M.M. and Others v. Latvia](#), appl. no. 42165/21, lodged on 20 August 2021 and communicated on 3 May 2022; [C.O.C.G. and Others v. Lithuania](#), appl. no. 17764/22, lodged on 8 April 2022 and communicated on 2 December 2022.

⁵⁸ Paras. 1.a-d of the 1997 Recommendation reads as follows: "1. In order to assess whether a country is a safe third country to which an asylum-seeker can be sent, all the criteria indicated below should be met in each individual case:

- respect by the third country for:
 - o international human rights standards relevant to asylum as established in universal and regional instruments, including the prohibition on torture and inhuman or degrading treatment or punishment;
 - o international principles relating to the protection of refugees, as reflected in the 1951 Refugee Convention and its 1967 Additional Protocol;
 - o the right to seek and enjoy asylum; and
 - o the principle of *non-refoulement*, with effective protection against *refoulement*;
- the asylum-seeker having been granted effective protection or had the opportunity to seek protection in the third country or at its borders, or there being clear evidence of the asylum-seeker's admissibility to the third country as a result of their personal circumstances.

38. The CDDH notes the distinct focus of each paragraph. Namely, paragraph 1.a. requires respect for human rights relevant to asylum by the third country, including the prohibition of ill-treatment; paragraph 1.b. requires respect for specific principles under international law relating to refugees, notably protection against *refoulement*; and paragraph 1.c. requires that the protection provided to the asylum-seeker is effective and that the third country will provide a possibility to seek and enjoy asylum. Finally, the CDDH considers that paragraph 1.d. addresses three alternating conditions, one of which concerns the question of admissibility or readmission of the asylum-seekers to the third country, in light of their personal circumstances.

39. Second, the CDDH examined the content of paragraph 2 of the 1997 Recommendation.⁵⁹ The CDDH considers that this paragraph is clear and primarily procedural. It seeks to enhance transparency by ensuring that both the individual concerned and the third country to which they are to be sent are aware that application of the safe third country concept means that the authorities in the sending state have not examined the individual's claim for international protection in substance.

40. Having observed the above, the CDDH also agrees that the main addressees of the 1997 Recommendation are national authorities. Therefore, the CDDH considers that, given the familiarity of national authorities with the safe third country concept and its application, the language of the 1997 Recommendation remains sufficiently clear for its main addressees.

a. observance by the third country of international human rights standards relevant to asylum as established in universal and regional instruments, including compliance with the prohibition of torture, inhuman or degrading treatment or punishment;

b. observance by the third country 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, with special regard to the principle of *non-refoulement*;

c. the third country will provide effective protection against *refoulement* and the possibility to seek and enjoy asylum;

d. the asylum-seeker has already been granted effective protection in the third country or has had the opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek protection there before moving on to the member state where the asylum request is lodged or, that as a result of personal circumstances of the asylum-seeker, including his or her prior relations with the third country, there is clear evidence of the admissibility of the asylum-seeker to the third country."

⁵⁹ Para. 2 of the 1997 Recommendation reads as follows: "2. States should adopt modalities to provide for informing the asylum-seeker and, as far as necessary and in accordance with existing data protection legislation – or, in absence of such legislation, with the consent of the asylum-seeker – the authorities of the third country that, when a country is considered safe in the above-stated manner, applications for asylum are generally not examined in substance."

3. Relevance of Today's Geopolitical and Different Hybrid Contexts

41. The CDDH acknowledges that the migration context has evolved significantly and major changes in the migration landscape have taken place since the adoption of the 1997 Recommendation. The CDDH considers the following factual situations and legal developments relevant to examining the current context and assessing the need and feasibility for an update: (1) changes in the migration context and systemic migration pressures, and (2) increase of bilateral and regional agreements and externalisation of migration management. The CDDH also notes that, in its caselaw, the Court has taken into consideration and assessed factual changes and the broader context that characterise current migration flows.⁶⁰ The CDDH considers that these changes in the migration context and measures chosen by member States to control migration flows are relevant in any assessment of the need to update the 1997 Recommendation and/or its Explanatory Memorandum and any further work by the CDDH in this area.

3.1. Changes in the Migration Context and Systemic Pressures

42. The CDDH underlines the importance of examining whether the 1997 Recommendation remains appropriate and relevant in the context of new developments, such as large-scale and complex migration situations that may not have been foreseen at the time of its adoption.⁶¹ In addition, the enlargement and changes in the EU and Council of Europe membership since 1997 have altered migration dynamics and are therefore important factors to be taken into account in the work of the CDDH.

43. Likewise, the development of new technologies has affected and facilitated irregular migration routes, which have become easier to access and to use. Increased connectivity and mobility have contributed to the growth of migration flows compared to when the 1997 Recommendation was adopted.

44. These changes in the migration context have led several member States to integrate the safe third country concept into their national asylum frameworks, although with significant differences in how it is applied in practice.⁶² Some states rely on pre-established lists of safe countries, while others apply the concept on a case-by-case basis. Certain member States have not incorporated the principle into their national legislation, while others are in the process of doing so.⁶³ These divergences are also reflected in the ECRE's database,⁶⁴ which is said to show some differences in application of the concept.⁶⁵

⁶⁰ For instance, see [Mansouri v. Italy](#) [GC], appl. no.63386/16, 29 April 2025, para. 113, in which the Grand Chamber took into account "the facts that the events in the present case unfolded in the context of border control exercised by Italy, a country which is in a front-line position in handling the flow of migrants from certain regions of Africa and the Middle East" and reiterated that, "in accordance with an established principle of international law, and subject to their treaty obligations, including those arising from the Convention, Contracting States have the right to control the entry, residence and removal of aliens." It also recognised that "in this area, it is especially important to give the national courts an opportunity to interpret domestic law and prevent or put right Convention violations through their own legal system." See also [N.D. and N.T. v. Spain](#) [GC], appl. nos. 8675/15 and 8697/15, 13 February 2020, para. 169, in which the Court emphasised "the challenges facing European States in terms of immigration control as the result of the economic crisis and recent social and political changes which have had a particular impact on certain regions of Africa and the Middle East."

⁶¹ See [CDDH-PTS\(2025\)05](#), Discussions.

⁶² See [CDDH-PTS\(2026\)01](#), Key points made by Prof Vincent Chetail.

⁶³ See [CDDH-PTS\(2025\)12](#), Key points made by Ophélie Marrel; [CDDH-PTS\(2026\)01](#), Key points made by Prof Vincent Chetail.

⁶⁴ See [CDDH-PTS\(2025\)12](#), Key points made by Eleonora Testi referring to the [Asylum Information Database](#).

⁶⁵ See [CDDH-PTS\(2025\)12](#), Key points made by Eleonora Testi.

45. The CDDH examined systemic pressures that have occurred in the past few years, including the 2015 refugee crisis, and recognised that recent years have seen large numbers of migrants arriving in various Council of Europe member States, both by sea and across land borders. Sudden mass irregular arrivals represent various complex challenges for frontline member States and countries of final destination, who have a sovereign right to protect national borders and decide who enters their territory. They may also place great strain on reception and asylum systems. All this continues to influence policy choices and remains a key factor in today's overall migration context.

46. In this context, the CDDH highlights the importance of responsibility-sharing in addressing migration, as enshrined in the 1951 Refugee Convention.⁶⁶ PACE has acknowledged the importance of responsibility-sharing when addressing changes in the migration context to ensure that the protection of refugees is not solely the duty of frontline states.⁶⁷ According to UNHCR, transfers to third countries should be based on cooperation and responsibility-sharing.⁶⁸ Amnesty International expressed concern that the safe third country concept may be used as a tool for shifting, rather than sharing, responsibility for refugee protection.⁶⁹

47. Another important and recent development in the migration context is the instrumentalisation of migration, which the CDDH considers should be duly taken into account in its work. Instrumentalisation of migration may be taken to refer to situations where migratory movements, including unlawful border crossings, are deliberately facilitated, encouraged or exploited by a hostile state or other actor, in some cases involving the use of force, with the aim of exerting pressure on, destabilising or undermining another state and European democracies. Unlike other forms of irregular migration or spontaneous mass influxes, it is characterised by its intentional, externally driven, and strategic nature. As such, it can be seen as a contemporary phenomenon which has emerged in a specific geopolitical and security context, posing particular challenges not only for territorial integrity and national security, but for the Convention system as a whole.⁷⁰

48. The CDDH considers that the protection of national security against hybrid threats relating to migration is an important factor to take into consideration in any assessment of the need to update the 1997 Recommendation and/or its Explanatory Memorandum and any further work by the CDDH in this area.

49. In addition, the CDDH discussed the question of whether a state, where it is, or has been, actively contributing to or responsible for an influx of migrants giving rise to hybrid threats, should be excluded from being considered a "safe" third country. The CDDH considered that in such circumstances, the fact that the state concerned is itself creating or exacerbating hybrid threats relating to migration would not preclude it by default from being regarded as safe.

⁶⁶ See the preamble of the [1951 Refugee Convention](#), stating that "[c]onsidering that the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot therefore be achieved without international co-operation."

⁶⁷ See [PACE Resolution 1821 \(2011\)](#) on "The Interception and rescue at sea of asylum-seekers, refugees and irregular migrants," 21 June 2011, para. 5.5; [PACE Resolution 2072 \(2015\)](#) on "After Dublin – the urgent need for a real European asylum system," 29 September 2015, para. 10.1 and 10.9.

⁶⁸ See [CDDH-PTS\(2025\)05](#), Key points made by Andreas Wissner.

⁶⁹ See [CDDH-PTS\(2025\)05](#), Key points made by Elisa De Pieri.

⁷⁰ See [CDDH\(2026\)R3 EXTRA Addendum](#), CDDH outcome document containing elements for a political declaration, 20 March 2026, para.54.

3.2. Increase of Bilateral and Regional Agreements and Externalisation of Migration

50. In recent years, there has been a marked growth in agreements on asylum and migration. States have explored bilateral and regional mechanisms to address and manage irregular movement of migrants or refugees through cooperation, including the transfer of asylum-seekers to third countries.⁷¹ A recent example is the UK-France Treaty, which was operationalised on a pilot basis in summer 2025. The EU-Türkiye Statement established a framework for the return of certain asylum-seekers from Greece to Türkiye. Both the UK-France Treaty and, to a limited extent, the EU-Türkiye Statement operated under a “1:1 mechanism.”⁷²

51. In this context, the CDDH takes note of the recent UNHCR guidance on “International agreements for the transfer of refugees and asylum-seekers,” which describes conditions under which, according to UNHCR, such transfers may be conducted based on a safe and lawful basis.⁷³ In particular, the guidance recalls that transfers must guarantee essential rights, including safety, access to fair and efficient asylum assessments, and dignified living conditions in the receiving country. The transferring state also has obligations to ensure that these rights are effectively respected and to provide the necessary material and financial support to the third country.⁷⁴ UNHCR has called for these transfers to be governed by legally binding frameworks that allow affected individuals to challenge the transfer before a court.⁷⁵ UNHCR has also stressed the need for clear, transparent, and accountable designation processes, with regular and ad hoc reviews taking into account both gradual and sudden changes in the designated country.⁷⁶ During the second exchange of views, effective monitoring mechanisms were mentioned as essential component of any system designed to uphold human rights standards in the context of transfer arrangements.⁷⁷

52. The CDDH further takes note that, in recent years, there has been a growing reliance on arrangements involving third countries – commonly referred to as the “externalisation” of migration management processes – including the application of the safe third country concept. While “externalisation” is not a legally defined term, it generally refers to the transfer of responsibilities for migration control, border management, asylum processing, and return procedures to third countries.⁷⁸ Several member States have expressed interest in pursuing arrangements based on externalisation measures, including processing asylum-seekers in third countries with which they have no prior connection.⁷⁹

53. Both the Council of Europe Commissioner for Human Rights and the UN Special Rapporteur on the human rights of migrants have expressed concerns about the risks of human rights violations raised by measures of externalisation of migration control. The recent report of the Commissioner for Human Rights identifies different forms of externalisation and emphasises the need for a precautionary approach, requiring prior assessment of human rights risks and the identification of measures to mitigate them, the establishment of clear and non-negotiable

⁷¹ See [CDDH-PTS\(2025\)12](#), Key points made by Andreas Wissner.

⁷² The “1:1 mechanism” refers to an arrangement whereby, for each irregular migrant returned to a third country, another individual is resettled from that country to the State party to the agreement.

⁷³ See UNHCR, “[International Agreements for the Transfer of Refugees and Asylum-Seekers](#),” 7 August 2025. See also [CDDH-PTS\(2025\)12](#), Key points made by Andreas Wissner.

⁷⁴ “[International Agreements for the Transfer of Refugees and Asylum-Seekers](#),” paras. 7, 10 and 15. See also [CDDH-PTS\(2025\)12](#), Key points made by Andreas Wissner.

⁷⁵ UNHCR, “[International Agreements for the Transfer of Refugees and Asylum-Seekers](#),” *op. cit.*, paras. 4-5.

⁷⁶ *Ibid.*, para. 10. See also [CDDH-PTS\(2025\)05](#), Key points made by Andreas Wissner.

⁷⁷ See [CDDH-PTS\(2025\)12](#), Key points made by Ophélie Marrel; Key points made by Eleonora Testi; Key points made by Andreas Wissner; Second Discussions.

⁷⁸ See [CDDH-PTS\(2026\)01](#), Key points made by Prof Vincent Chetail.

⁷⁹ See [CDDH-PTS\(2025\)12](#), Key points made by Eleonora Testi; Key points made by Christian Mommers.

principles, conditioning cooperation with third countries on compliance with safeguards, and enhancing transparency, monitoring and accountability.⁸⁰ Additionally, ECRE recalled that policies based on externalisation, such as Australia's offshore processing in Nauru and Papua New Guinea, and Israel's attempted transfers of Eritrean and Sudanese asylum-seekers to Uganda and Rwanda, have raised serious human rights concerns.⁸¹ National Human Rights Institutions (NHRIs) have also referred to the risk of undermining fundamental protection standards and responsibility-sharing if the safe third country concept were applied to externalise asylum procedures to a third country.⁸²

54. The CDDH recognises that cooperation is a key element in managing migration, including in the application of the safe third country concept. It underlines the importance of considering that not all member States are involved in transferring or returning migrants and asylum-seekers – some may act as receiving states under transfer arrangements or host facilities operated by other member States on their territory.

4. Interplay with Ongoing EU Legislative Developments

55. The CDDH recognises the close relationship between the Convention and EU law, as well as the context in which the 1997 Recommendation was drafted (see above, paragraph 5 of this study). Therefore, while taking into account the fact that not all member States are bound by relevant EU legislation, the CDDH considers it important in the context of any potential review or update of the 1997 Recommendation and/or its Explanatory Memorandum to take into account several EU legislative developments since 1997.

56. The CDDH takes note that in 2013, the Asylum Procedures Directive (APD) set out provisions on asylum procedures, including on the application of the safe third country concept. Its application allows an EU Member State to reject an asylum application as inadmissible without examining the merits, on the basis that the person could or should have received or sought protection in a third country considered safe for them. Under EU law, application of the safe third country concept remains optional.⁸³ Further developments are currently underway at EU level (see below, paragraphs 60-64 of this study).

4.1. New EU Pact on Migration and Asylum

57. The CDDH takes note of the adoption in 2024 of the EU Pact on Migration and Asylum.⁸⁴

58. As part of this Pact, the APD is to be replaced by the Asylum Procedures Regulation (APR).⁸⁵ The APR introduces changes relevant to the safe third country concept. It sets out criteria for considering a country safe, the right to an individual assessment of the safety, and the right to an effective remedy.⁸⁶ In particular, the APR broadens the existing framework by permitting the designation as “safe” of countries that are not parties to the 1951 Refugee Convention, provided

⁸⁰ See “[Externalised asylum and migration policies and human rights law](#),” *op. cit.* See also [CDDH-PTS\(2025\)12](#), Key points made by Christian Mommers.

⁸¹ See [CDDH-PTS\(2025\)12](#), Key points made by Eleonora Testi.

⁸² See [CDDH-PTS\(2025\)12](#), Key points made by Ophélie Marrel.

⁸³ See Article 38 of [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). See also [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁸⁴ See [Pact on Migration and Asylum](#), May 2024.

⁸⁵ 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 (“APR”). See also [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁸⁶ See Articles 59, 60, 63 and 64 of the [APR](#).

they can offer effective protection as defined in EU law.⁸⁷ The APR also allows a country to be designated as safe with exceptions for specific parts of its territory or for clearly identifiable groups of persons.⁸⁸

59. In addition, the APR introduces a mechanism for designating safe third countries at EU level, under which the European Commission reviews the situation in third countries.⁸⁹ The APR also enshrines the possibility of national designations of safe third countries other than those designated at EU level for the purpose of examining applications for international protection.⁹⁰ Under the new EU Pact on Migration and Asylum, the application of the safe third country concept still remains optional.⁹¹

4.2. New Provisions on the Safe Third Country Concept

60. The CDDH also examined the process for revising provisions on the safe third country concept, under the APR, which was taking place at the time the CDDH-PTS undertook preparatory work on the study. This examination was facilitated by regular updates on the ongoing processes at EU level by a representative from the Directorate General for Migration and Home Affairs of the European Commission.

61. The CDDH was informed that, as part of the negotiations on the EU Pact on Migration and Asylum, the European Commission was asked to review the safe third country concept and proposed amendments by June 2025.⁹² Following a comprehensive review, the European Commission presented in May 2025 a proposal to amend the APR regarding application of the safe third country concept.⁹³ The review identified uneven application of the safe third country concept across the EU: some EU Member States have not incorporated the concept into national law; others have done so but apply it either via lists or case-by-case assessments; and some do not apply the concept in practice despite having a legal framework for doing so.⁹⁴ Several EU Member States called for a simplification of the concept and for greater flexibility in its application.⁹⁵

62. The European Commission assessed there was limited scope for revision of the safe third country concept provisions, and therefore proposed targeted amendments, focussing on: i) the connection requirement, and ii) the automatic suspensive effect of appeals against inadmissibility decisions.⁹⁶ The CDDH takes note that the European Commission's working document accompanying its proposal took into account the 1997 Recommendation and its criteria⁹⁷ and considered the jurisprudence of the Court.⁹⁸ In this context, the CDDH recalls that the Convention does not prohibit States parties to the Convention from establishing lists of countries presumed to

⁸⁷ See Article 57 of the [APR](#).

⁸⁸ See Articles 57(2) and 59(2) of the [APR](#). See also [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁸⁹ See Article 60 of the [APR](#).

⁹⁰ See Article 64 of the [APR](#).

⁹¹ See [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁹² See Article 77 of the [APR](#). See also [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁹³ See [COM\(2025\)259 final](#), 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, 20 May 2025.

⁹⁴ See SWD(2025)600 final, [Commission Staff Working Document](#), "Review of the safe third country concept accompanying the document 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, 20 May 2025, p. 3. See also [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁹⁵ See [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁹⁶ See [COM\(2025\)259 final](#), *op. cit.*, pp. 2-3. See also [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

⁹⁷ See [SWD\(2025\)600 final](#), *op. cit.*, pp. 4-5. See also [CDDH-PTS\(2025\)12](#), First Discussions.

⁹⁸ See [SWD\(2025\)600 final](#), *op. cit.*, pp. 1, 4, 5, 8, 9, 11, 12; See also [CDDH-PTS\(2025\)12](#), Key points made by Nina Brennan.

be safe; however, any such presumption must be supported from the outset by an analysis of the country's conditions and asylum system.⁹⁹

63. On 24 February 2026, Regulation (EU) 2026/463 of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the application of the concept of safe third country was adopted.¹⁰⁰ The new Regulation amends several provisions of the APR concerning the safe third country concept. It lists three alternative conditions under which the safe third country concept may be applied, namely: (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 EU; or (iii) there is an agreement or an arrangement between the EU, one or more EU Member States, or one or more EU 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 any requests for effective protection made in the third country concerned by applicants covered by that agreement or arrangement.¹⁰¹ In the case of ground (iii), this condition does not apply where the applicants are unaccompanied minors.¹⁰² The new Regulation also contains additional paragraphs regarding EU-level agreements and bilateral or multilateral agreements or arrangements between EU Member States and third countries.¹⁰³ In addition, in order to enhance procedural efficiency, the new Regulation removes the right to an automatic suspensive effect of appeals for asylum applications rejected as inadmissible on safe third country grounds, or where protection has already been granted by another EU Member State,¹⁰⁴ aligning it with the general rule for other inadmissibility decisions. Nevertheless, removals should be suspended during the time limit within which the applicant concerned can exercise his or her right to an effective remedy before a court of first instance and, when such an appeal is lodged, where there is a risk of *refoulement*.¹⁰⁵

64. The CDDH acknowledges that these changes at EU level prompt adjustments in national frameworks of Council of Europe member States who are also EU Member States, and may also have practical implications for non-EU Council of Europe member States, including any with which bilateral or regional arrangements may be concluded.

5. Level of Detail Appropriate for a Recommendation on the Safe Third Country Concept

65. The CDDH examined the level of detail that should be included in a recommendation on the application of the safe third country concept, considering the advantages and disadvantages of maintaining a high-level text versus introducing more concrete provisions.

66. The CDDH recognises that the 1997 Recommendation employs broad and general language (see Appendices 1 and 2).¹⁰⁶ The CDDH considers that broad drafting is appropriate for

⁹⁹ See [CDDH-PTS\(2025\)05](#), Key points made by Thomas Straub citing *Ilias and Ahmed v. Hungary* [GC], *op. cit.*

¹⁰⁰ See [Regulation \(EU\) 2026/463](#) of the European Parliament and of the Council of 24 February 2026 amending Regulation (EU) 2024/1348 as regards the application of the concept of safe third country.

¹⁰¹ *Ibid.*, Article 1 (1) (a).

¹⁰² *Ibid.*, Article 1 (1) (b).

¹⁰³ *Ibid.*, Article 1 (1) (a)(ii).

¹⁰⁴ *Ibid.*, Article 1 (2).

¹⁰⁵ *Ibid.*, recital Article 14.

¹⁰⁶ Paragraph 1 of the 1997 Recommendation reads as follows: "1. In order to assess whether a country is a safe third country to which an asylum-seeker can be sent, all the criteria indicated below should be met in each individual case:

a. observance by the third country of international human rights standards relevant to asylum as established in universal and regional instruments, including compliance with the prohibition of torture, inhuman or degrading treatment or punishment;

a recommendation. It identified several advantages of maintaining such approach: it has ensured its capacity to withstand the test of time and its flexible application, while also respecting international standards in relation to the safe third country concept, including past developments.

67. Nevertheless, the CDDH also examined the potential added value of using more concrete language in the 1997 Recommendation and/or its Explanatory Memorandum.

68. The CDDH noted that a more detailed formulation could better reflect the Court's post-1997 caselaw and could also enhance clarity and practical applicability of the text, including for its main addressees. However, the CDDH also identified possible risks in adopting overly detailed or prescriptive wording. For example, too much specificity could make the instrument less flexible and limit its applicability over time.

69. Finally, the CDDH considered issues of public accessibility and visibility in the event of an update of the 1997 Recommendation and/or its Explanatory Memorandum. In particular, the CDDH noted that the Explanatory Memorandum was not published together with the 1997 Recommendation itself, which may make it more challenging for those interested in the 1997 Recommendation or applying it in practice to access all the relevant information about the 1997 Recommendation. Therefore, the CDDH agreed that updating the 1997 Recommendation and/or its Explanatory Memorandum could improve the overall accessibility and visibility of the instrument, including among stakeholders beyond national authorities.

V. Conclusions

70. The CDDH considered the need for and feasibility of updating the 1997 Recommendation and/or the Explanatory Memorandum to the 1997 Recommendation, taking into account both the recent legal and policy developments and continuous relevance and flexibility of the 1997 Recommendation.

71. The CDDH considers that three possible courses of action may be envisaged: no update of either the 1997 Recommendation or its Explanatory Memorandum; updating both the text of the 1997 Recommendation and its Explanatory Memorandum; or updating only the Explanatory Memorandum.

72. The CDDH took note of the following reasons for updating the Recommendation and/or its Explanatory Memorandum:

- the current text of the 1997 Recommendation, also considering its general character, does not reflect the most recent and well-established procedural obligations linked to

b. observance by the third country 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, with special regard to the principle of *non-refoulement*;

c. the third country will provide effective protection against *refoulement* and the possibility to seek and enjoy asylum;

d. the asylum-seeker has already been granted effective protection in the third country or has had the opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek protection there before moving on to the member state where the asylum request is lodged or, that as a result of personal circumstances of the asylum-seeker, including his or her prior relations with the third country, there is clear evidence of the admissibility of the asylum-seeker to the third country."

Paragraph 2 of the 1997 Recommendation reads as follows: "2. States should adopt modalities to provide for informing the asylum-seeker and, as far as necessary and in accordance with existing data protection legislation – or, in absence of such legislation, with the consent of the asylum-seeker – the authorities of the third country that, when a country is considered safe in the above-stated manner, applications for asylum are generally not examined in substance."

Convention rights, as clarified by the Court in its post-1997 caselaw.¹⁰⁷ It does not, however, contradict that caselaw.

- the 1997 Recommendation and its Explanatory Memorandum are silent on considerations related to persons in vulnerable situations and gender perspectives,¹⁰⁸ which appear and are addressed in both the Court's post-1997 caselaw and the 2009 Guidelines. The provisions of the Recommendation and its Explanatory Memorandum do not, however, contravene the Court's caselaw concerning the protection of such persons.
- an update could address changes in geopolitical realities, providing guidance on evolving migration trends and emerging security risks not addressed in the current text, such as instrumentalisation of migration, hybrid threats, and situations specific to frontline, transit, and destination states.
- updating the Explanatory Memorandum alone would allow the Council of Europe to provide legal clarity and technical guidance without reopening the text of the Recommendation. It would serve to bridge the gap between the general principles of 1997 and the specific procedural obligations in the Court's subsequent jurisprudence, and to support more consistent application of the Convention's standards.

73. In this connection, the CDDH noted that some delegations had raised certain specific issues that could potentially be addressed in any updating of the 1997 Recommendation or its Explanatory Memorandum.¹⁰⁹

74. The CDDH took note of the following reasons for not updating the Recommendation and/ or its Explanatory Memorandum:

- the 1997 Recommendation, due to its non-binding and general nature and broad language, allows for flexibility in its application, regardless of developments in the caselaw of the Court and the economic, social, and legal developments that have taken place since its adoption. This flexibility has ensured continued applicability without any revision to date. Reformulation of the Recommendation could lead to excessive rigidity of the text, entailing a risk that the updated Recommendation might quickly become outdated.
- the Recommendation remains sufficiently clear in its current formulation for its main addressees, namely national authorities. Revising the 1997 Recommendation could have unintended consequences, particularly given the recent adoption of the Chişinău Declaration¹¹⁰ and the recent developments at the EU and EU Member States as regards the application of the safe third country concept.

75. Having carefully considered and balanced these arguments, the CDDH is of the view that, at present, neither the 1997 Recommendation nor its Explanatory Memorandum should be updated.

¹⁰⁷ See Sections III.,1. and IV.1.,1.1 of this study.

¹⁰⁸ See Sections III.,1. and IV.,1.,1.1. and 1.2. of this study.

¹⁰⁹ See [CDDH-PTS\(2026\)03](#), Compilation of indications of any elements which could be added as part of any update of the Recommendation and/or its Explanatory Memorandum.

¹¹⁰ [CM\(2026\)99-final](#), 15 May 2026.

APPENDIX 1**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

RECOMMENDATION No. R (97) 22**OF THE COMMITTEE OF MINISTERS TO MEMBER STATES CONTAINING
GUIDELINES ON THE APPLICATION OF THE
SAFE THIRD COUNTRY CONCEPT**

*(Adopted by the Committee of Ministers on 25 November 1997
at the 609th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Having regard to principles relating to asylum as enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration on Human Rights, the United Nations Declaration on Territorial Asylum and the Declaration on Territorial Asylum adopted by the Committee of Ministers of the Council of Europe, and recalling the importance of the full implementation of the 1951 Convention and 1967 Protocol relating to the Status of Refugees;

Recognising the growing complexity of asylum issues in member states;

Stressing the importance of member states agreeing common principles relating to certain asylum issues;

Conscious of the need to avoid asylum-seekers being sent successively from one state to another without any of these states considering their asylum claim ;

Anxious to provide for appropriate and effective protection for asylum-seekers and refugees who are in need of it, and that asylum-seekers are given an opportunity to have their claims examined by one state;

Noting that in those cases where a member state considers that asylum-seekers should apply for asylum in the first or subsequent country in which they had an opportunity to do so, and where the asylum-seeker is to be removed to that country or sent to another country, there is a need to establish under which conditions such a country can be considered safe for the asylum-seeker;

Without prejudice to other international instruments applicable between member states,

Adopts the following guidelines:

1. In order to assess whether a country is a safe third country to which an asylum-seeker can be sent, all the criteria indicated below should be met in each individual case:
 - a. observance by the third country of international human rights standards relevant to asylum as established in universal and regional instruments, including compliance with the prohibition of torture, inhuman or degrading treatment or punishment;
 - b. observance by the third country 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, with special regard to the principle of *non-refoulement*;
 - c. the third country will provide effective protection against *refoulement* and the possibility to seek and enjoy asylum.
 - d. the asylum-seeker has already been granted effective protection in the third country or has had the opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek protection there before moving on to the member state where the asylum request is lodged or, that as a result of personal circumstances of the asylum-seeker, including his or her prior relations with the third country, there is clear evidence of the admissibility of the asylum-seeker to the third country.
2. States should adopt modalities to provide for informing the asylum-seeker and, as far as necessary and in accordance with existing data protection legislation - or, in absence of such legislation, with the consent of the asylum-seeker - the authorities of the third country that, when a country is considered safe in the above-stated manner, applications for asylum are generally not examined in substance.

APPENDIX 2**COUNCIL OF EUROPE
COMMITTEE OF MINISTERS**

EXPLANATORY MEMORANDUM**to Recommendation No. R (97) 22
of the Committee of Ministers to member states
Guidelines on the application of the safe third country concept**

*(Adopted by the Committee of Ministers on 25 November 1997
at their 609th meeting of Ministers' Deputies)*

Introduction

1. The Committee of Ministers, in establishing the specific terms of reference of the Ad hoc Committee of Experts on the Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), stated that one of the committee's tasks is "to make proposals for the solution of practical and legal problems facing states in the field of territorial asylum, refugees and stateless persons, particularly by drawing up appropriate legal instruments (conventions and recommendations) in the liberal and humanitarian spirit of the member states of the Council of Europe aiming at among others to settle the question of the countries of first asylum and of territorial asylum and to look into specific situations in the new host countries".
2. In the context of these terms of reference, the CAHAR recognised the need, in the light of different approaches in the member states, to reach a common understanding on the problem of refugees and asylum-seekers who move from a country in which they had the opportunity to seek, or had already found, protection.
3. In the resolution on a harmonised approach to questions concerning "host third countries", adopted by the ministers of the member states of the European Communities responsible for immigration, in December 1992, certain guidelines were established. The CAHAR was conscious of the need to take into account other international commitments of member states and therefore the following sentence was included in the preamble: "without prejudice to other international instruments applicable between member states."
4. In drafting this recommendation the committee took account of the mentioned resolution on "host third countries", as well as of the relevant provisions of the convention determining the state responsible for examining applications for asylum lodged in one of the member states of the European Communities (Dublin Convention) and of EXCOM Conclusions No. 15 (XXX) on refugees without an asylum country and No. 58 (XL) on problems of refugees and asylum-seekers who move in an irregular manner from a country in which they had already found protection.
5. The draft finalised by the ad hoc committee was forwarded to the Committee of Ministers and was adopted by it on 25 November 1997 at the 609th meeting of the Ministers' Deputies.

General considerations

6. Some member states consider that asylum-seekers should apply for asylum in the first or subsequent country in which they had an opportunity to do so when such a country is considered safe ("safe third country"). Some member states do not apply this concept. Some other member states also consider it appropriate, in cases of personal circumstances as specified by the last part of paragraph I.d of the recommendation, to send the asylum-seeker to another country.

7. The aim of the recommendation is to indicate under which conditions a country may be considered safe in order to provide appropriate and effective protection for asylum-seekers and refugees who are in need of it and in order that asylum-seekers be given an opportunity to have their claims examined by one state. The third state should meet in each individual case all those criteria which establish that it is a safe third country for the asylum-seeker.

8. The recommendation uses the term "asylum-seeker" as used by Council of Europe documents, meaning a person applying for asylum in any manner whatsoever.

Comments on the principles set out in the recommendation

9. The preamble recalls the principles relating to asylum as enshrined in fundamental instruments of human rights, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, the Universal Declaration on Human Rights, the United Nations Declaration on Territorial Asylum and the Declaration on Territorial Asylum adopted by the Committee of Ministers of the Council of Europe, as well as the importance of the full implementation of binding universal instruments of international refugee law such as the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol.

10. The guidelines adopted in the recommendation set out four cumulative criteria for assessing whether a country is a safe third country. These criteria refer to the observance of certain standards and principles by the third state and indicate certain conditions specific to the relationship between the individual asylum-seeker and the third state.

11. According to paragraph I.a of the guidelines, observance by the third country of international human rights standards relevant to asylum is an essential prerequisite. Such standards must be identified with those contained in applicable human rights instruments which are listed in the first paragraph of the preamble. These standards include the prohibition of torture, inhuman or degrading treatment or punishment. Member states of the Council of Europe, as the relevant decisions of the European Court of Human Rights point out, are under an obligation not only to respect this prohibition in their own territory, but also to refrain from sending an individual to another state where he would be subjected to treatment which would be in breach of relevant articles of the European Convention on Human Rights, whether or not that state is a party to the Convention.

12. Paragraph I.b of the guidelines requires the observance by the third state of international principles relating to the protection of refugees as embodied in the 1951 United Nations Convention relating to the Status of Refugees and its 1967 Protocol. The third state is, therefore, required to observe international protection principles, even if not a party to the 1951 Convention and 1967 Protocol, with special regard to the principle of non-refoulement as formulated in Article 33 of the 1951 Convention.

13. Paragraph I.c of the guidelines requires that the third country provide effective protection against refoulement as well as providing the possibility to seek asylum and, where

granted by the third country, to enjoy asylum. The key concern of effective protection is the personal safety of the asylum-seeker and this criterion is linked with the corresponding paragraph in the preamble of the recommendation which states that asylum-seekers should be given an opportunity to have their claims examined by one state.

14. Paragraph I.d of the guidelines contains three alternative conditions, one of which must be fulfilled:

- i. the first condition specifies that the asylum-seeker has already been granted effective protection in the third country and that this effective protection, in the meaning of the personal safety of the asylum-seeker, continues to be available for the asylum-seeker on his or her return to that country;
- ii. the second condition specifies that the asylum-seeker, prior to coming to the member state, at the border or within the territory of the third state, has had the opportunity to make contact with the authorities, in order to seek protection there. This being the basic condition, the recommendation does not contain any provision on the duration and nature of stay or transit in the third state. Member states have different or no provisions by law, in this regard;
- iii. the third condition refers to the case where it is assessed that the asylum-seeker will be readmitted to the third state due to the personal circumstances of the asylum-seeker, including his or her prior relations with the third country. These circumstances may include, for example, a valid residence permit, or close family links in the third state. Some states consider that, if all other criteria as established in paragraphs I.a to c are met, the above-mentioned personal circumstances of the asylum-seeker indicate clear evidence of admissibility to another country. This they deem satisfactory grounds for sending the asylum-seeker to that country.

15. In paragraph II of the guidelines, member states are recommended to adopt modalities for informing the asylum-seeker and, as far as necessary, the authorities of the third country, that when a country is considered safe in the above-stated manner, applications for asylum are generally not examined in substance. This information is transmitted to member states in accordance with existing data protection legislation or, in the absence of such legislation, with the consent of the asylum-seeker. This is an important provision in order to prevent the asylum-seeker, when referred to a safe third country, being assumed to be a rejected asylum claimant in the sending country and, as a consequence of this assumption, treated accordingly.

16. The guidelines do not specify, as a prerequisite for removal, the consent of the third state concerned. Nevertheless, as expressed in the fifth paragraph of the preamble, successive expulsions and “refugees-in-orbit” situations should be avoided as they may represent a threat to the personal safety of the asylum-seeker and, in such cases, may be incompatible with the principle of effective protection.

17. Problems relating to burden-sharing and transit countries have not been dealt with by the recommendation.

18. None of the provisions of the recommendation exclude the possibility that member states provide asylum-seekers and refugees with broader entitlements.