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STEERING COMMITTEE FOR HUMAN RIGHTS
COMITÉ DIRECTEUR POUR LES DROITS HUMAINS
(CDDH)

DRAFTING GROUP ON THE SAFE THIRD COUNTRY CONCEPT
GROUPE DE RÉDACTION SUR LA NOTION DE PAYS TIERS SÛR
(CDDH-PTS)

Compilation of indications received of any elements which could be added as part of any update of the Recommendation and/or its Explanatory memorandum

Compilation des indications reçues de tout élément susceptible d'être ajouté dans le cadre d'une éventuelle mise à jour de la Recommandation et/ou de son Exposé des motifs

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MEMBERS / MEMBRES**CROATIA / CROATIE**

Memorandum by Croatian delegation

With a view to contribute to further discussions on possible conclusions concerning the need to revise the Recommendation and/or its Explanatory Memorandum, and following the Chairperson's invitation to submit indications of elements for possible incorporation into any future update of these texts, the Croatian delegation hereby submits the following elements for consideration.

Starting from the Preamble of the Recommendation, we suggest adding also direct reference to the principles stemming from the case law of the European Court of Human Rights (ECtHR). Furthermore, the reference to the standards established in the ECtHR's case-law should be set out *verbatim* in Article 1.a of the Recommendation.

Regarding Article 1.a. of the Recommendation, we propose that the corresponding part of the Explanatory Memorandum (paragraph 11) be supplemented with a clarification of the obligations incumbent upon States pursuant to the legal standards developed by the ECtHR. These are the obligations the working group had discussed and which are set out in the document '*Preliminary draft text – proposed draft elements for the structure of the study*'."

Namely, under Article 3 of the Convention, the Court has consistently underlined that a removing State, as a Contracting Party, must carry out a comprehensive and rigorous assessment of whether the person concerned faces a real risk of being denied access to an asylum procedure that effectively safeguards against *refoulement*. If the guarantees available in the receiving country do not provide sufficient protection, the State is obliged to refrain from enforcing the removal. A proper examination of the risks arising under Article 3 must take place before any transfer to a third country is executed.

The Croatian delegation also suggests that the Explanatory Memorandum should refer to States' obligations under Article 3 to assess the reception conditions for asylum seekers, including inadequate living conditions and risks associated with detention.

Further guidance to the States in the Explanatory memorandum could be provided on the nature of the procedural obligations arising under Article 3 when States rely on the concept of a "safe third country":, i.e.

- i) the obligation to **undertake, on its own motion, a detailed, up-to-date assessment** of the situation in the third country, focusing in particular on whether its asylum system is accessible, reliable, and capable of offering Convention-compliant protection. Such assessment should be made primarily on the information available at the time of removal, while also taking active steps to gather all relevant publicly accessible material;
- ii) recognise that a State **cannot rely on presumptions** regarding the third country's compliance with Convention standards; instead, it must ascertain how asylum legislation is applied in practice by the authorities of that country;

- iii) the obligation of a State to secure for asylum seekers a **genuine opportunity** to demonstrate that the third country would not be safe in their individual circumstances;
- iv) the obligation of a State to ensure that individuals presenting an **arguable claim** that their removal would expose them to treatment contrary to Article 3 have access to an **effective remedy**, both in law and in practice.

In light of the foregoing, the Croatian delegation respectfully submits that a possible future revision of the Recommendation and its Explanatory Memorandum could explicitly incorporate the relevant principles stemming from the case law of the European Court of Human Rights, thereby ensuring full alignment with the States' procedural and substantive obligations under Article 3 of the Convention. While the text of the Recommendation itself does not, in our view, require substantial amendment, its Explanatory Memorandum should be further developed to provide clearer guidance on the scope and nature of these obligations—particularly those arising in the context of reliance on the “safe third country” concept and the assessment of reception conditions.

FINLAND / FINLANDE

With reference to paragraph 9 of the latest meeting report of the CDDH-PTS (CDDH-PTS(2025)R3), Finland submits below its preliminary view of elements which could be added as part of any update of the Recommendation and/or its Explanatory Memorandum.

- If updated, we would find it useful that the new recommendation would:
 - identify the most relevant and well established procedural obligations and safeguards linked to the rights of individuals under the Convention as clarified by the Court; including those referred to in paragraph 19 of the draft [CDDH-PTS\(2025\)07REV](#), such as the right of asylum-seekers to rebut the presumption of safety of the third country
 - acknowledge the special need for protection and safeguards for children and other persons in vulnerable situations, such as persons with disabilities, survivors of torture and human trafficking, and acknowledge that in the case of children, their best interests are paramount.
 - include the relevant guidance of the Court (as far as available at the time of drafting) on relevant security factors, including hybrid threats and instrumentalization of migration (see below)
- With reference to the above and with regard to possible further work, the CM could instruct the CDDH/CDDH-PTS to take note of any developments in the court's case law regarding relevant security factors, including hybrid threats and the instrumentalisation of migration and, as far as available, include relevant guidance on these topics in the new recommendation. As noted in the draft study of the CDDH-PTS, these questions are currently under examination by the Grand Chamber of the European Court of Human Rights in the cases of *R.A and Others vs Poland*, appl. no. 42120/21; *H.M.M. and Others vs Latvia*, appl. no. 42165/21; and *C.O.C.G. and Others vs Lithuania*, appl. no. 17764/22, but even other relevant cases may be available at the time when possibly drafting a new recommendation.

- Also, one issue that could merit further examination is the substantive content of paragraph 1 d of the current Recommendation.
- As a general observation Finland considers that a new recommendation offering more detailed and substantive guidance, could enhance the practical applicability and consistent application of the recommendation as it would not be dependent on the individual expertise or background knowledge of the person implementing it, but be rather accessible and understandable to all relevant actors. References to the current recommendation appear to be relatively rare, to the extent this can be assessed, which might be due to its very general nature. A new recommendation with more detailed and substantive content could, therefore, entail added value also by promoting visibility and broader awareness of applicable Council of Europe standards.

ITALY / ITALIE



Permanent Representation of Italy to the Council of Europe Italy's position on the 3rd meeting of the CDDH Committee – PTS

1. Italy's position:

First of all, reference is made to the memo already submitted by Italy following the previous CDDH-PTS meeting: the current Recommendation R(97)22 and the related Guidelines have proven to be a flexible and adequate tool that can be updated through interpretation to reflect social and historical changes in relation to Safe Third Countries. Therefore, there is no need to make any changes, which would in fact complicate its interpretation.

That said, further considerations are provided on the procedural level (timing). As will be seen from the conclusions, it is appropriate for the CDDH-PTS to continue its work in 2026 without adopting any decisions for the time being.

2. Further considerations:

There is no doubt that the work of the CDDH-PTS Committee is intrinsically linked to the work being carried out in parallel within the European Union.

This is also clear by the attention paid to this aspect by the Secretariat in the work of the CDDH-PTS Committee. In fact, in addition to Nina Brennan's presentation of the European Commission's Directorate-General for Migration and Home Affairs, which was greatly appreciated at the last meeting, this meeting also devoted considerable space to information about the progress of EU work (see item 3 of the agenda).

We agree with this wise approach.

3. EU instruments effective in June 2026:

It should be noted that there are two EU instruments that will have to be implemented over the next year. These are:

a. **The European Union Pact on Migration and Asylum**, an instrument aimed at reforming the European migration and asylum management system, whose main objectives are:

- managing arrivals in the EU asylum system in an orderly manner;
- establishing faster and more efficient procedures for asylum applications;
- ensuring that Member States cooperate in terms of solidarity and responsibility (i.e. that no Member State is left alone to manage migratory pressure);
- integrating migration, asylum, external borders and integration into a single framework.

The legislative package was formally adopted by the Council of the European Union on 14 May 2024, and the rules came into force on 11 June 2024, but – as is well known – **the effective implementation of the Plan is scheduled for June 2026.**

Only then will the new EU rules on asylum, migration and borders be fully operational and it will be possible to verify their application “in the field”.

b. **Regulation (EU) 2024/1348** of the European Parliament and of the Council of 14 May 2024 (also known as the “**Asylum Procedures Regulation**”), which establishes common procedures for international protection in the EU.

The Regulation “establishes a common procedure for international protection in the Union”, repealing and replacing the previous Directive 2013/32/EU (“Asylum Procedures Directive”); it therefore also relates to the concept of safe third countries and the relevant rules.

The Regulation is part of the Pact on Migration and Asylum, therefore it entered into force on 11 June 2024 and will be applied **from June 2026**.

The Regulation is therefore part of the legislative package that constitutes the Pact on Migration and Asylum: it is one of the legal instruments through which the Pact is implemented.

The Regulation governs the asylum procedure and is therefore central to the operational functioning of the entire framework.

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The provisions contained in the Pact and the Regulation also concern the protection of human rights and the subject matter of this CDDH-PTS exercise.

In order to ensure that the outcome of the CDDH-PTS's work is up to date and fruitful, it is therefore essential to supplement the study with information that will result from the application of the new instrument (Pact and EU Regulation).

4. The Informal Conference of Ministers of Justice on 10 December 2025

In addition, the Council of Europe has organised the **Informal Conference of Ministers of Justice** that was held in Strasbourg on the 10 December, where a document was adopted; the meeting was decided on the proposal of the Secretariat on possible actions by the Council of Europe, specifically on the issue of the relationship between the guarantees offered by the European Convention on Human Rights and the measures adopted by member countries to manage migration flows, including from the perspective of prevention and state security, and this from a dynamic perspective.

Among the points originally indicated by the Secretary General of the Council of Europe there was to “task the Council of Europe's Steering Committee for Human Rights (CDDH) with preparing a political declaration to be adopted in 2026 at a dedicated conference of the foreign ministers of the Council of Europe member states. This declaration could set out the states' views on migration and the Convention, while guaranteeing the independence and judicial impartiality of the Court. The text would clearly indicate how the High Contracting Parties interpret the Convention in cases of migration, including in relation to criminal activities. Research and empirical data show that the Court is not indifferent to such political declarations and takes them into account in its judicial work.”

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IMPORTANT: The CDDH Committee will soon be tasked with the important work outlined above on migration and human rights. It is appropriate to await the outcome of this work, and in particular

the planned Declaration of the Committee of Ministers in ministerial format in Chisinau, before the CDDH-PTS subcommittee makes any determinations on the exercise of the Safe Third Country principle.

5. Conclusions:

a) **Very important multilateral exercises that interfere with Safe Third Country issues are at an advanced stage:**

- the entry into force of the EU Pact on Migration and Asylum
- the entry into force of the EU Regulation on Asylum Procedures
- work by the CoE (CDDH Committee) on a Declaration on migration and human rights.

b) **All these exercises will be finalised in the course of 2026**

c) **pending these developments, it is important that the CDDH-PTS subcommittee does not take any decisions on a possible revision of Recommendation CM 22/97.**

d) **Without taking any decisions, the CDDH-PTS may nevertheless continue to work on keeping the exercise alive. It will remain “seized” as an effective, comprehensive and up-to-date tool providing valuable support to the Council of Europe's activities in a context of international consistency.**

POLAND / POLOGNE

With reference to the work of the Drafting Group on the Safe Third Country Concept (CDDH-PTS), and in response to the invitation for delegations to indicate any elements that could be added as part of an update of Recommendation No. R (97) 22 and/or its Explanatory Memorandum, I wish to convey the following information.

At the current stage of the work of the CDDH-PTS the Government of the Republic of Poland (Government) do not rule out the possibility that an update of the Memorandum may be justified, while at the same time maintaining a high level of generality of the text of the Recommendation itself, so that this instrument remains flexible and capable of further adaptation to legal and policy developments, as well as to the outcomes of legislative processes within the EU, which are of key importance for the practical application of the concept.

In the event that the CDDH-PTS support an update of the Recommendation and/or the Memorandum, the Government present a list of issues which, in their view, constitute desirable elements of any potential update.

At the same time, the Government reserve the right to take a final decision at a later stage as to the need for, and the feasibility of, updating the Recommendation and/or the Memorandum.

List of issues (elements of a potential update)

1. Ensuring proper reflection of changes in the migration context, including the phenomenon of the instrumentalisation of migration, the situation of frontline states, and states located along transit routes.
2. Maintaining the general, framework nature of the criteria for the “safety” of a third country, with explicit reference to the standards arising from the ECHR, the Geneva Convention, and other relevant instruments, while leaving Member States flexibility as to the manner of their implementation, including through practice, bilateral agreements and regional arrangements.

3. Clarifying the requirements concerning the assessment of the safety of a third country in the light of the most recent case-law of the ECtHR, in particular with regard to the obligation to ensure effective protection against refoulement, access to the asylum procedure and the possibility to challenge the presumption of safety; while also noting that the use of up-to-date, publicly available country information may reduce the need for a full individual assessment in each case.
4. Including elements in the updated Memorandum relating to the monitoring of the application of the safe third country concept, including the transparency of criteria, regular review of lists and “safety” criteria, and taking into account new security threats and new international obligations.
5. Making explicit reference to the specific needs of vulnerable groups, in particular unaccompanied minors, with an emphasis on the necessity to ensure adequate safeguards and to assess the best interests of the child in the context of applying the safe third country concept.
6. Maintaining terminology consistent with the existing practice of Member States, including the preference in translations for the term “sending” rather than “removal”, and a cautious approach to editorial changes which do not enhance the clarity of the text.