



CDDH-PTS(2026)05
12/03/2026

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 comments received on
Preliminary draft text on possible conclusions on the need for an update of the
Recommendation (CDDH-PTS(2026)02) and
Amended draft text of the study (CDDH-PTS(2026)04)**

*Compilation des commentaires reçus sur
Projet de texte préliminaire sur d'éventuelles conclusions sur la nécessité d'une mise à jour de
la Recommandation (CDDH-PTS(2026)02) et
Projet révisé de texte sur l'étude (CDDH-PTS(2026)04)*

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CDDH-PTS(2026)02

MEMBERS / MEMBRES

FINLAND / FINLANDE

3. The CDDH further notes that the 1997 Recommendation and its Explanatory Memorandum are silent on considerations related to persons in vulnerable situations and gender perspectives,¹ which appear both in the Court's post-1997 caselaw and the 2009 Guidelines. The CDDH acknowledges the importance of integrating explicit references to the needs of such groups, including children, unaccompanied minors, survivors of torture, victims of trafficking, and persons with disabilities, and of adopting a gender-sensitive approach, in line with broader Council of Europe standards.²
4. Likewise, the CDDH is of the view that an update could address emerging security risks and changes in geopolitical realities, providing guidance on issues not addressed in the current text, such as instrumentalisation of migration, hybrid threats, and situations specific to frontline, transit, and destination states. In this context, the CDDH considers it important to note that the Committee of Ministers is preparing a political declaration on the contemporary challenges related to migration, expected in May 2026.³
6. At the same time, the CDDH notes that 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 made since its adoption. This flexibility has ensured continued pertinence without any formal revision to date. There may be the possibility that reformulation of the guidelines could potentially lead to excessive rigidity of the text and that a detailed incorporation of the Court's subsequent caselaw would not allow for the anticipation of situations that cannot yet be envisaged today, but which may occur in the future. Moreover, the CDDH considers that the main addressees of the Recommendation, namely national authorities, can understand and implement the 1997 Recommendation in its current formulation.
8. Some delegations expressed concerns that revising the 1997 Recommendation could have unintended consequences, particularly given developments at the EU level scheduled for 2026, notably the implementation of the EU Pact on Migration and Asylum and the APR. Other delegations considered that there are aspects of the 1997 Recommendation that could benefit from clarification or further detail, notably paragraph

Commented [ST1]: FI comment: Please add here "with due regard to the best interests of the child"

Commented [ST2]: FI comment: We would suggest to rephrase this part as follows: "address the changes in geopolitical realities and emerging security risks"

Commented [ST3]: FI comment: We wonder whether "that have taken place" would be a more suitable expression here

Commented [ST4]: FI comment: We suggest to change "pertinence" to "applicability"

Commented [ST5]: FI comment: We suggest to replace "guidelines" with "recommendation"

Commented [ST6]: FI comment: We suggest to rephrase this part to "for the main addressees of the Recommendation, namely national authorities, the Recommendation remains sufficiently clear", as this would be more in line with the study.

Commented [ST7]: FI comment: Should it be clarified whether this refers to delegations of the CDDH or the CDDH-PTS?

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

² See in particular Council of Europe Division on Migration and Refugees, "[Vulnerability of migrants, asylum-seekers and refugees: Council of Europe and European Union standards](#)," November 2025; Practical Guide for public authorities, "[Protecting the Rights of Migrant, Refugee and Asylum-seeker Women and Girls](#)," November 2025.

³ See [CM/Del/Dec\(2025\)1546/4.3](#), Decisions of the Ministers' Deputies on follow-up to the Informal Ministerial Conference (Strasbourg, 10 December 2025).

1.d on connections between an asylum seeker and the third country, which has been noted as lacking in clarity. Updating the Recommendation and/or its Explanatory Memorandum could provide an opportunity to clarify this section, thereby enhancing the practical utility of the text. Proposals have been made to improve definitions and address substantive issues, such as the “connection criteria” and the “suspensive effect of appeals”, which are not presently covered by the 1997 Recommendation, potentially taking into account the discussion of these matters at the EU level.

Commented [ST8]: FI comment: We suggest this to be amended as follows: “Thus, updating the Recommendation and/or its Explanatory Memorandum could provide not only a possibility to underline the most relevant and established procedural safeguards applicable but also an opportunity to clarify paragraph 1. d, thereby...”

10. The CDDH underlines that the 1997 Recommendation was drafted in broad and flexible language. This approach has allowed the Recommendation to remain compatible with the evolving jurisprudence of the Court without requiring textual changes. The current formulation provides a robust baseline that accommodates contemporary challenges and the procedural safeguards developed in the Court’s caselaw. The CDDH notes that, while the 1997 Recommendation does not explicitly reference persons in vulnerable situations or gender perspectives, its provisions do not contravene the Court’s caselaw concerning the protection of such persons. Furthermore, the 2009 Guidelines on human rights protection in the context of accelerated asylum procedures offer additional guidance specifically on the treatment of persons in vulnerable situations, thereby complementing the Recommendation and supporting its effective application by national authorities.

Commented [ST9]: FI comment: We suggest to amend as follows: “complementing - within its sphere of application - the Recommendation...”

11. The CDDH identifies several risks associated with an update at this juncture:
- Incorporating detailed caselaw into a non-binding instrument could lead to legal rigidity of standards, reducing the ability of states to adapt to future, unforeseen migration situations;
 - Initiating a revision at this stage may be untimely in light of the upcoming Committee of Ministers’ Political Declaration on migration and the current EU process regarding the implementation of the EU Pact on Migration and Asylum; and
 - Prematurity, given the important cases concerning instrumentalisation of migration that are currently pending before the Grand Chamber; an update may be rendered obsolete or incomplete if prepared in advance of the delivery of the Court’s judgments in these cases.

Commented [ST10]: FI comment: We would prefer “Incorporating legal principles established in caselaw”

12. On this basis, the CDDH concludes that there currently is no need to update the 1997 Recommendation, or its Explanatory Memorandum.

Commented [ST11]: FI comment: The wording “no need” might be to categorical in light of the observations made in the drafting group, thus, we suggest rephrasing to “that it is currently not feasible to update”

13. The CDDH therefore recommends that the Committee of Ministers could:
- Take note of the CDDH study concluding that the 1997 Recommendation remains a relevant and sufficiently flexible reference for member States; and
 - Encourage member States to continue applying the principles of the Recommendation in light of the most recent developments in the Court’s caselaw and other Council of Europe standards.]

Commented [ST12]: FI comment: We note that the study does not currently discuss the relevance of the current Recommendation as such, but rather the need for update. Thus, we suggest to delete the words “relevant and” here.

[CONCLUSIONS – OPTION 2: Update both the 1997 Recommendation and its Explanatory Memorandum

14. In view of the foregoing considerations, the CDDH discussed the added value of updating the 1997 Recommendation and/or its Explanatory Memorandum and concludes that, while the 1997 Recommendation remains a broadly relevant instrument, an update is necessary to maintain its relevance in light of evolved Court jurisprudence and contemporary geopolitical challenges. To ensure clarity and consistency for national authorities as well as public accessibility and visibility, including among stakeholders beyond national authorities, the CDDH recommends:

Commented [ST13]: FI comment: Please see FI comment to paragraph 13 above. We suggest to rephrase to “...1997 Recommendation is not in contradiction with subsequent developments in the Court’s case law”

Commented [ST14]: FI comment: We suggest to rephrase as follows: “...ensure clarity and consistent application of the Recommendation by national authorities, as well as...”

- a revision of the 1997 Recommendation so as to ensure clarity of high-level principles and a reflection of essential procedural safeguards as contained in the Court's jurisprudence, whilst maintaining flexibility and its general nature; and
 - a revision of the Explanatory Memorandum to provide more detailed practical and technical guidance for national authorities, based notably on the Court's caselaw.
15. On this basis, the CDDH identifies the following specific issues that could be addressed in a possible update:
- In the Recommendation:
 - o Maintaining a general framework for the safety criteria of a third country, while referencing relevant standards developed by the Court and ensuring sufficient practical flexibility for member States, including various legal arrangements and practices such as bilateral and regional arrangements;
 - o Clarifying requirements concerning assessment standards for the safety of third countries, particularly the obligation to ensure effective protection against *refoulement* and access to the asylum procedure. Such assessment should be based on up-to-date, publicly available country information and focus on whether the asylum system is accessible, reliable, and capable of offering Convention-compliant protection. The assessment should take into account the individual circumstances of the applicant and the conditions prevailing at the time of transfer;
 - o Enhancing guidance on the monitoring and regular review of safe third country designations, taking into consideration emerging security threats and new international obligations;
 - o Explicitly recognising states' obligations to permit individuals to rebut the presumption of safety and to ensure access to an effective remedy with suspensive effect for individuals presenting an arguable claim that transfer to a third country would expose them to treatment contrary to Article 3 of the Convention;
 - o Integrating high-level references to persons in vulnerable situations, including but not limited to children, unaccompanied minors, survivors of torture, victims of trafficking, and persons with disabilities, and incorporating a gender-sensitive approach in line with broader Council of Europe standards;
 - o Ensuring adequate safeguards and upholding the best interests of the child, informed by guidance from relevant judgments of the Court, such as *Tarakhel v. Switzerland*; and
 - o Taking into account relevant legal and policy developments at the EU level.
 - In the Explanatory Memorandum: the provision of detailed practical and technical guidance to assist national authorities in the application of the safe third country concept consistent with Convention standards, particularly regarding procedural safeguards, the assessment of safety – including in complex migration management contexts – and the specific needs of persons in vulnerable situations.
16. The CDDH therefore recommends that the Committee of Ministers could:
- Instruct the CDDH to prepare a draft revision of Recommendation No. R(97)22 and its Explanatory Memorandum, as indicated above;
 - Instruct the CDDH to ensure that the revised text maintains the general nature of the 1997 instrument while providing the specific legal clarity required; and
 - Encourage member States to refer to the updated Recommendation and Explanatory Memorandum as a primary source of guidance for the consistent application of the safe third country concept.]

Commented [ST15]: FI comment: We suggest to amend as follows: "to promote the consistent application of high-level principles"

Commented [ST16]: FI comment: We suggest to amend as follows: "...ensuring, within the limits of the obligations of the Member States, practical flexibility, including..."

Commented [ST17]: FI comment: We wonder whether this should be clarified?

Commented [ST18]: FI comment: We suggest to add "automatic" here

Commented [ST19]: FI comment: We suggest to amend as follows: "...– including in complex and emerging migration management contexts, such as instrumentalization of migration – and the..."

Commented [ST20]: FI comment: We suggest to remove the reference to Recommendation 1997 here and to use a more general notion, i.e. "maintains a general nature while providing..."

Commented [ST21]: FI comment: We suggest to amend as follows: "the legal guidance and clarity required"

18. However, the CDDH recognises that there is substantial room to update the Explanatory Memorandum to the 1997 Recommendation to reflect the significant developments that have occurred since 1997. While the basic approach of the original Memorandum remains adequate, an update of the Explanatory Memorandum would allow for the inclusion of guidance on well-established Court caselaw and recognition of the evolution in geopolitical realities. Such a revision would ensure that the Explanatory Memorandum continues to serve as a practical and relevant tool for national authorities, providing the specific technical guidance necessary to implement the Recommendation's general principles in today's context, and increase public accessibility and visibility of the instrument, including among stakeholders beyond national authorities.

Commented [ST22]: FI comment: We suggest to add "consistently" here

20. On this basis, the CDDH identifies the following specific issues to be addressed within an updated Explanatory Memorandum:

Commented [ST23]: FI comment: We suggest to make the same changes to paragraph 20 as we have suggested to be made to paragraph 15 respectively

GERMANY / ALLEMAGNE

6. Conclusion on the need for an update

1. 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 Recommendation.

2. The CDDH takes note that, given its general character as a Recommendation, the current text of the 1997 Recommendation does not reflect the most recent and well-established procedural obligations linked to Convention rights, as clarified by the Court in its post-1997 caselaw.⁴ While it was highlighted that there is no contradiction between the current text of the 1997 Recommendation and the Court's caselaw as established to date, the CDDH notes that there could be added value in updating the Recommendation and/or its Explanatory Memorandum to reflect recent developments in the Court's jurisprudence.

3. The CDDH further notes that the 1997 Recommendation and its Explanatory Memorandum are silent on considerations related to persons in vulnerable situations and gender perspectives,⁵ which, however, appear both and are adequately addressed in the Court's post-1997 caselaw and the 2009 Guidelines. The CDDH acknowledges that integrating explicit references to the needs of such groups, including children, unaccompanied minors, survivors of torture, victims of trafficking, and persons with disabilities, and of adopting a gender-sensitive approach, would be in line with broader Council of Europe standards.⁶

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4. Likewise, the CDDH is of the view that an update could address emerging security risks and changes in geopolitical realities, providing guidance on issues not addressed in the current text, such as instrumentalisation of migration, hybrid threats, and situations specific to states of

Commented [BS25]: This sentence suggests that there is a strong need for an update, a position Germany does not agree on. We strongly suggest to redraft this sentence. At this point, pros and cons of whether to the Recommendation needs an update should be weighed in a balanced way.

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⁴ See Sections III.,1. and IV.1.,1.1 of this study.

⁵ See Sections III.,1. and IV.,1.,1.1. and 1.2. of this study.

⁶ See in particular Council of Europe Division on Migration and Refugees, "[Vulnerability of migrants, asylum-seekers and refugees: Council of Europe and European Union standards](#)," November 2025; Practical Guide for public authorities, "[Protecting the Rights of Migrant, Refugee and Asylum-seeker Women and Girls](#)," November 2025.

first entry, transit, and destination. In this context, the CDDH considers it important to note that the Committee of Ministers is preparing a political declaration on the contemporary challenges related to migration, expected in May 2026.⁷

5.

6. Furthermore, the CDDH took note that there is ample evidence that a connection criterion is not required under international law, notwithstanding the possibility to apply the concept, as a policy choice, only when a connection between the asylum seeker and the third country exists. Hence, should the CDDH come to the conclusion that an update of the 1997 Recommendation and/or the Explanatory Memorandum to the 1997 Recommendation is needed, this legal analysis could also be reflected on in an updated version.

7. Moreover, evolving migration trends, new challenges, and significant developments in the Court's caselaw since the adoption of the 1997 Recommendation may not be fully captured in the current Recommendation and its Explanatory Memorandum, which reflect the *status quo* of the law at the time of adoption. An update could enhance clarity, provide practical guidance, and support more consistent application of the Convention's standards, particularly with respect to procedural safeguards now more clearly established in the Court's jurisprudence.

8. At the same time, the CDDH notes that 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 made since its adoption. This flexibility has ensured continued pertinence without any formal revision to date. Reformulation of the guidelines could lead to excessive rigidity of the text and a detailed incorporation of the Court's subsequent caselaw would not allow for the anticipation of situations that cannot yet be envisaged today, but which may occur in the future. Moreover, the CDDH considers that the main addressees of the Recommendation, namely national authorities, can understand and implement the 1997 Recommendation in its current formulation.

9. Besides, the CDDH acknowledges that the added value of a more detailed Recommendation and/or Explanatory Memorandum could be questioned. The Court has in a plethora of cases defined and clarified the legal framework of the Convention with regard to the application of the safe third country concept. The requirements of the Convention can be derived in particular from landmark cases such as *Ihlias & Ahmed*. In addition, other instruments of international law, including the 2009 Recommendation, provide further guidance for states on how to apply the safe third country concept in full compliance with their human rights obligations. Therefore, for application in practice, the conditions laid down in the 1997 Recommendation and its Explanatory Memorandum can and should be read in conjunction with the Court's case law and other instruments, in particular the 2009 Guidelines. The added value of a mere repetition of the content of the case law and other instruments like the 2009 Guidelines in the Recommendation and/or the Explanatory Memorandum remains unclear.

10. Some delegations expressed concerns that revising the 1997 Recommendation could have unintended consequences, particularly given developments at the EU level scheduled for 2026, notably the implementation of the EU Pact on Migration and Asylum and the APR. Other delegations considered that there are aspects of the 1997 Recommendation that could benefit from clarification or further detail, notably paragraph 1.d on connections between an asylum

Commented [BS26]: See our comment in the other document.

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Moved down [2]: <#>In light of the foregoing, the CDDH considers that three possible courses of action may be envisaged as a result of this study. First, it may be concluded that no update to the 1997 Recommendation is required at this stage. Secondly, it may be considered both necessary and feasible to update the text of the 1997 Recommendation and its Explanatory Memorandum. Thirdly, it may be determined that only the Explanatory Memorandum to the 1997 Recommendation should be revised.¶

⁷ See [CM/Del/Dec\(2025\)1546/4.3](#), Decisions of the Ministers' Deputies on follow-up to the Informal Ministerial Conference (Strasbourg, 10 December 2025).

seeker and the third country, which has been noted as lacking in clarity. Updating the Recommendation and/or its Explanatory Memorandum could provide an opportunity to clarify this section, thereby further enhancing the practical utility of the text. Proposals have been made to improve definitions and address substantive issues, such as the “connection criteria” and the “suspensive effect of appeals”, which are not presently covered by the 1997 Recommendation, taking into account the discussion of these matters at the EU level.

11. In light of the foregoing, the CDDH considers that three possible courses of action may be envisaged as a result of this study. First, it may be concluded that no update to the 1997 Recommendation is required at this stage. Secondly, it may be considered both necessary and feasible to update the text of the 1997 Recommendation and its Explanatory Memorandum. Thirdly, it may be determined that only the Explanatory Memorandum to the 1997 Recommendation should be revised.

[CONCLUSIONS – OPTION 1: No update]

12. In view of the foregoing considerations, the CDDH recalls its mandate to prepare a study on the need for and feasibility of updating Recommendation No. R(97)22 on the application of the safe third country concept. After extensive analysis of the current legal framework, the caselaw of the Court, and the submissions by member States and external experts, the CDDH concludes that there currently is no need for an update or revision of the 1997 Recommendation or its Explanatory Memorandum.

18. On this basis, the CDDH identifies the following specific issues that could be addressed in a possible update:

- In the Recommendation:
 - o Maintaining a general framework for the safety criteria of a third country, while referencing relevant standards developed by the Court and ensuring sufficient practical flexibility for member States, including various legal arrangements and practices such as bilateral and regional arrangements;
 - o Clarifying requirements concerning assessment standards for the safety of third countries, particularly the obligation to ensure effective protection against *refoulement* and access to the asylum procedure. Such assessment should be based on up-to-date, publicly available country information and focus on whether the asylum system is accessible, reliable, and capable of offering Convention-compliant protection. The assessment should take into account the individual circumstances of the applicant and the conditions prevailing at the time of transfer;
 - o Enhancing guidance on the monitoring and regular review of safe third country designations, taking into consideration emerging security threats and new international obligations;
 - o Explicitly recognising states' obligations to permit individuals to rebut the presumption of safety and to ensure access to an effective remedy with suspensive effect for individuals presenting an arguable claim that transfer to a third country would expose them to treatment contrary to Article 3 of the Convention;
 - o Recalling that a specific connection between the asylum seeker and a third country (“connection criterion”) is not mandatory under international law but rather a policy tool that my foster integration into the host country, while acknowledging that the objective of local integration can also be met by fulfilling other requirements stemming from the Court’s case law;

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Commented [BS27]: This should be at the end of this paragraph.

Commented [BS28]: We support option 1 of the conclusions but still took the liberty to include drafting suggestions for the other options in case a majority of delegations supports them.

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- Integrating references to persons in vulnerable situations, including but not limited to children, unaccompanied minors, survivors of torture, victims of trafficking, and persons with disabilities, and incorporating a gender-sensitive approach in line with broader Council of Europe standards;
- Ensuring adequate safeguards and upholding the best interests of the child, informed by guidance from relevant judgments of the Court, such as *Tarakhel v. Switzerland*; and
- Taking into account relevant legal and policy developments at the EU level.

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21. However, the CDDH recognises that there is substantial room to update the Explanatory Memorandum to the 1997 Recommendation to reflect the significant developments that have occurred since 1997. While the basic approach of the original Memorandum remains adequate, an update of the Explanatory Memorandum would allow for the inclusion of guidance on well-established Court caselaw and recognition of the evolution in geopolitical realities and complement the 1997 Recommendation rather than just paraphrasing its content. Such a revision would ensure that the Explanatory Memorandum continues to serve as a practical and relevant tool for national authorities, providing the specific technical guidance necessary to implement the Recommendation's general principles in today's context, and increase public accessibility and visibility of the instrument, including among stakeholders beyond national authorities.

23. On this basis, the CDDH identifies the following specific issues to be addressed within an updated Explanatory Memorandum:

- Maintaining a general framework for the safety criteria of a third country, while referencing relevant standards developed by the Court and ensuring sufficient practical flexibility for member States, including various legal arrangements and practices such as bilateral and regional arrangements;
- Clarifying requirements concerning assessment standards for the safety of third countries, particularly the obligation to ensure effective protection against *refoulement* and access to the asylum procedure. Such assessment should be based on up-to-date, publicly available country information and focus on whether the asylum system is accessible, reliable, and capable of offering Convention-compliant protection. The assessment should take into account the individual circumstances of the applicant and the conditions prevailing at the time of transfer;
- Enhancing guidance on the monitoring and regular review of safe third country designations, taking into consideration emerging security threats and new international obligations;
- Recalling that a specific connection between the asylum seeker and a third country ("connection criterion") is not mandatory under international law but rather a policy tool that my foster integration into the host country, while acknowledging that the objective of local integration can also be met by fulfilling other requirements stemming from the Court's case law;
- Explicitly recognising states' obligations to permit individuals to rebut the presumption of safety and to ensure access to an effective remedy with suspensive effect for individuals presenting an arguable claim that transfer to a third country would expose them to treatment contrary to Article 3 of the Convention;
- Integrating references to persons in vulnerable situations, including but not limited to children, unaccompanied minors, survivors of torture, victims of trafficking, and persons with disabilities, and incorporating a gender-sensitive approach in line with broader Council of Europe standards;

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- Ensuring adequate safeguards and upholding the best interests of the child, informed by guidance from relevant judgments of the Court, such as *Tarakhel v. Switzerland*;
- Taking into account relevant legal and policy developments at the EU level; and
- Explaining the relevance of contemporary challenges not envisioned in 1997, such as the instrumentalisation of migration and hybrid threats, supporting a consistent application of the Convention's standards and reflecting the forthcoming judgments of the Grand Chamber, and the upcoming Committee of Ministers' Political Declaration on migration.

NORWAY / NORVÈGE

Regarding the conclusions of the draft study, Norway would prefer Conclusion 1 (no update). However, we remain open to discussing Conclusion 3 (updating the Explanatory Memorandum only).

CDDH-PTS(2026)04

MEMBERS / MEMBRES

FINLAND / FINLANDE

- The CDDH-PTS also held a series of exchanges of views with experts:
 - at its first meeting, with Andreas WISSNER, Representative to the European Institutions in Strasbourg, UNHCR, Elisa DE PIERI, Researcher, Europe Regional Office, Amnesty International, and Thomas STRAUB, Senior Lawyer, Registrar of the European Court of Human Rights;
 - at its second meeting, with [Nina BRENNAN](#),⁸ 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,"⁹ and [Christian MOMMERS](#), Adviser to the Office of the Council of Europe Commissioner for Human Rights, presenting [on the Commissioner's new report on "Externalised asylum and migration policies and human rights law,"](#)¹⁰
- According to [the Explanatory Memorandum to the 1997 Recommendation](#),¹¹ 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-

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Commented [ST31]: FI comment: To our understanding the word "on" is not necessary here

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Commented [ST32]: FI comment: Consider adding "Appendix 2" in the footnote

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⁸ Ms Nina Brennan also provided updates on EU processes during the third [and fourth] meeting[s] of the CDDH-PTS.

⁹ UNHCR, "International Agreements for the Transfer of Refugees and Asylum-Seekers," 7 August 2025.

¹⁰ Council of Europe Commissioner for Human Rights, "Externalised asylum and migration policies and human rights law," 4 September 2025.

¹¹ See Appendix 2.

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.¹²

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 for such a country to be considered safe for the asylum-seeker.¹³
- 9.
- a. 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,¹⁴ at least one of which must be met. It further clarifies these conditions as follows:
- d.
 - 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. The asylum-seeker will be readmitted to the third country due to their personal circumstances, which may include 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 constitute clear evidence of admissibility to another country. Such circumstances are deemed satisfactory grounds for sending the asylum-seeker to that country.
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:
23. The 2009 Guidelines 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.¹⁵

¹² Explanatory Memorandum to the 1997 Recommendation, para. 7.

¹³ Preamble of the 1997 Recommendation.

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

¹⁵ *Ibid.*, paras. 2-3.

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Commented [ST33]: FI comment: We suggest to change this part of the sentence to read: "conditions need to be established under which such a country can be considered safe for the asylum-seeker" as this corresponds better to the wording of the preamble ("there is a need to establish under which conditions such a country can be considered safe for the asylum-seeker").

Deleted: , in the form of guidelines, sets out the conditions under which a country may be considered safe for an asylum-seeker in cases where a member State considers that asylum application should be made in the first or subsequent country in which the asylum-seeker had the opportunity to do so, and where the asylum-seeker is to be removed to that country.

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Commented [ST34]: FI comment: We suggest to add "It is assessed that" in the beginning of the sentence as the wording of the Ex mem reads as follows:

"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 1.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."

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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, which 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 underline 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.¹⁶

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, there have been certain developments in the Court's caselaw and the 2009 Guidelines that 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.

37. – The asylum-seeker having been granted 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 refers to the possibility to seek and enjoy asylum in the third country. Finally, the CDDH considers that paragraph 1.d. addresses three alternating conditions, one of which addresses the question of admissibility or readmission of the asylum-seekers to the third country or at its border, in light of their personal circumstances.

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 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 the factual changes and the environmental context that characterise current migration flows.¹⁷ The CDDH considers that these changes in the migration context and

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¹⁶ 2009 Guidelines, III. Vulnerable persons and complex cases, paras. 1-3.

¹⁷ 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 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

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.

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 is taken to refer to situations where migratory movements are deliberately facilitated, encouraged or exploited by states or other actors with the aim of exerting pressure on, destabilising or undermining a member State and European democracies. The characteristics of instrumentalisation of migration may raise new legal and factual issues concerning application of the Convention.¹⁸

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 the study.

76. The CDDH recognises that the 1997 Recommendation employs broad and general language (see Appendices 1 and 2).¹⁹ The CDDH considers that broad drafting is appropriate for 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 and recent developments. Therefore, should it be envisaged to update the recommendations or their Explanatory Memorandum, the updates should also ensure that the instrument is sufficiently flexible and non-prescriptive in its nature.

East" and "reiterates 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."

¹⁸ 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 v. Poland*, appl. no. 42120/21; *H.M.M. and Others v. Latvia*, appl. no. 42165/21; and *C.O.C.G. and Others v. Lithuania*, appl. no. 17764/22, in which the Court held public hearings on 12 February 2025.

¹⁹ 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; 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."

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78. The CDDH noted that a more detailed formulation could better reflect the Court's post-1997 case law 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.

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iii. The asylum-seeker will be readmitted to the third country due to their personal circumstances, including prior relations to the third country, which may include 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 constitute clear evidence of admissibility to another country. Such circumstances are deemed satisfactory grounds for sending the asylum-seeker to that country.

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”,²⁰
- “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.”²¹ 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”,²²
- 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,²³ and
- ensure that asylum-seekers are given “sufficient opportunity” to demonstrate that the third country is not safe in their specific case²⁴ 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

²⁰ See *Ilias and Ahmed v. Hungary*, *op. cit.*, para. 139, citing *M.S.S. v. Belgium and Greece*, *op. cit.*, paras. 344-359 and 365-368.

²¹ See *Ilias and Ahmed v. Hungary*, *op. cit.*, para. 141, citing *Sharifi v. Austria*, appl. no. 60104/08, 5 December 2013, paras. 31 and 32.

²² See *Ilias and Ahmed v. Hungary*, *op. cit.*, para. 141, citing *M.S.S. v. Belgium and Greece*, *op. cit.*, para. 359.

²³ See *Tarakhel v. Switzerland* [GC], *op. cit.*, paras. 100-122.

²⁴ See *Ilias and Ahmed v. Hungary*, *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.”

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“The Court has also attached importance as to whether, in the context of the return procedure, a returnee has been provided with procedural safeguards such as the provision of the services of an interpreter, or the issuance of documents in a language that the returnee understands, and access to a lawyer (*H.T. v. Germany and Greece*, no. 13337/19, paras. 124, 148, 150), and to whether the transferring state has taken steps to ensure that this the returnee's entry into the country is possible (See *S.S. and others v. Hungary*, nos. 56417/19 and 44245/20, paras. 66-67). The general principle in the caselaw of the Court whereby “[o]wing to the special situation in which asylum-seekers often find themselves, it is frequently necessary to give them the benefit of the doubt when assessing the credibility of their statements and any supporting documents”, should also be taken into consideration (*K. I. v. France, J.K. and Others v. Sweden*).”

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and practice. The Grand Chamber held that in case of “any claim that there exist substantial grounds for fearing a real risk of treatment breaching Article 3, [...] the person concerned should have access to a remedy with automatic suspensive effect”.²⁵

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, which 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.²⁶

29. The two academic experts consulted by the CDDH discussed the potential for updating the text of the Recommendation in line with developments in the Court caselaw. One viewed a revision useful for capturing developments made before the Court and supporting UNHCR guidance in a coherent, analytical manner.²⁷ 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 States an update could be an opportunity to clarify and consolidate evolving Convention standards from a human rights perspective, he cast doubt as to whether an update would have a great added value.²⁸

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

45. The CDDH also examined systemic pressures that have occurred in recent years, notably the 2015 refugee crisis. Large-scale arrivals of 2015, together with high levels of irregular migration in subsequent years, including via routes other than the Eastern Mediterranean and Western Balkans, had a significant impact on asylum systems and reception conditions in several member States, including countries of first entry and of final destination for migrants. All this continues to influence policy choices and remain 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.²⁹ PACE has acknowledged the importance of responsibility-sharing when addressing changes in the migration context to

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The Grand Chamber 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.”

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²⁵ See *M.S.S. v. Belgium and Greece*, op. cit., paras. 293, 317-320; *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.

²⁶ 2009 Guidelines, III. Vulnerable persons and complex cases, paras. 1-3.

²⁷ See CDDH-PTS(2026)01, Key Points made by Prof Dr Thym; Discussions.

²⁸ See CDDH-PTS(2026)01, Discussions.

²⁹ See the preamble of the Convention relating to the Status of Refugees, adopted on 28 July 1951 (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 recognised the international scope and nature cannot therefore be achieved without international co-operation.”

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ensure that the protection of refugees is not solely the duty of the most affected states.³⁰ According to UNHCR, transfers to third countries should be based on cooperation and responsibility-sharing.³¹ 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.³²

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 can be understood to refer to situations where migratory movements are deliberately facilitated, encouraged or exploited by states or other actors with the aim of exerting pressure on, destabilising or undermining a member State and European democracies. The characteristics of instrumentalisation of migration may raise new legal and factual issues concerning application of the Convention.³³

54. 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.³⁴ A recent example is the UK-France Treaty, which was operationalised on a pilot basis in summer 2025 and will remain in force until June 2026. The EU-Türkiye Statement, which established a framework for the return of certain asylum-seekers from Greece to Türkiye, has since ceased to be applied. Both the UK-France Treaty and the EU-Türkiye Statement operated under a "1:1 mechanism".³⁵

55. 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.³⁷ 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.³⁸ UNHCR has called for these transfers to be governed by legally binding frameworks that allow affected individuals to challenge the transfer before a court.³⁹ 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

³⁰ 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, 10.9.

³¹ See CDDH-PTS(2025)05, Key points made by Andreas Wissner.

³² See CDDH-PTS(2025)05, Key points made by Elisa De Pieri.

³³ 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 v. Poland*, appl. no. 42120/21; *H.M.M. and Others v. Latvia*, appl. no. 42165/21; and *C.O.C.G. and Others v. Lithuania*, appl. no. 17764/22, in which the Court held public hearings on 12 February 2025.

³⁴ See CDDH-PTS(2025)12, Key points made by Andreas Wissner.

³⁵ 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.

³⁷ 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.

³⁸ "International Agreements for the Transfer of Refugees and Asylum-Seekers," paras. 7, 15. See also CDDH-PTS(2025)12, Key points made by Andreas Wissner.

³⁹ "International Agreements for the Transfer of Refugees and Asylum-Seekers," paras. 4-5.

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changes in the designated country.⁴⁰ ~~The issue of monitoring the receiving country's compliance with legal obligations was also raised.~~⁴²

4.1. New EU Pact on Migration and Asylum

63. The CDDH ~~takes~~ note of the adoption in 2024 of the EU Pact on Migration and Asylum.⁴³

64. As part of this Pact, the APD will be replaced by the Asylum Procedures Regulation (APR), which is due to apply from June 2026.⁴⁴ 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.~~⁴⁵ 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 they can offer effective protection as defined in EU law. 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.⁴⁶

4.2. New Provisions on the Safe Third Country Concept applicable from 12 June 2026

66. The CDDH also examined the ~~process for revising provisions on the~~ safe third country concept, under the APR prior to its applicability. This 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.

69. As regards the connection criterion, the European Commission proposed ~~that it no longer be mandatory under EU law, noting that international law does not require a connection.~~⁴⁷ The European Commission's proposal allows EU "member States to apply the safe third country concept when (i) there is a connection between the applicant and a safe third country in question, or (ii) where the applicant has transited through a safe third country, or (iii) in case of no connection or transit, when there is an agreement or arrangement with a safe third country requiring the examination of the merits of the requests for effective protection made by applicants subject to that agreement or arrangement."⁴⁸ This safeguard ~~was~~ intended to prevent "orbit situations" and ensure the sustainability of transfers. Two additional safeguards would also apply: the third option would not apply to unaccompanied minors due to their vulnerable status, and a new transparency clause would oblige EU member States to inform

⁴⁰ "International Agreements for the Transfer of Refugees and Asylum-Seekers," para. 10. See also CDDH-PTS(2025)05, Key points made by Andreas Wissner.

⁴² See CDDH-PTS(2025)12, Key points made by Andreas Wissner; Key points made by Christian Momms; Second Discussions. See also "International Agreements for the Transfer of Refugees and Asylum-Seekers," para. 10, stating that "the transferring State must undertake regular monitoring to ensure that the agreed standards are consistently met in practice."

⁴³ See Pact on Migration and Asylum, May 2024.

⁴⁴ 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.

⁴⁵ See Articles 59 and 60 of the APR.

⁴⁶ See Articles 57(2) and 59(2) of the APR. See also CDDH-PTS(2025)12, Key points made by Nina Brennan.

⁴⁷ See CDDH-PTS(2025)12, Key points made by Nina Brennan. See also CDDH-PTS(2026)01, Key points made by Prof Dr Daniel Thym.

⁴⁸ 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, p. 5.

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the European Commission and other EU member States of any such proposed agreements or arrangements before their conclusion.⁴⁹ The proposed changes have been agreed on by the EU institutions and entered into force on 26 February 2026. They will, therefore, be applicable from 12 June 2026 onwards.

70. As regards the automatic suspensive effect of appeals against inadmissibility decisions based on the safe third country concept, the legislative changes remove it, aligning with the general rule for other inadmissibility decisions. Applicants would retain the right to request leave from a court to remain in the territory of the state adopting the decision pending appeal.⁵⁰

71. The CDDH takes note that the European Commission's working document accompanying its proposal took into account the 1997 Recommendation and its criteria⁵¹ and, considered the jurisprudence of the Court.⁵² In this context, the CDDH recalls that the Convention does not prohibit States parties to the Convention from establishing lists of countries presumed to be safe; however, any such presumption must be supported from the outset by an analysis of the country's conditions and asylum system.⁵⁴

76. The CDDH recognises that the 1997 Recommendation employs broad and general language, (see Appendices 1 and 2).⁵⁵ The CDDH considers that broad drafting is appropriate for 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 [and recent] developments]. [Given its broad language, the Recommendation in its current form would very likely not require an update or modifications in case of future jurisprudence of the Court that provides further guidance on the application of the safe third country. Therefore, should it be envisaged to update the recommendations or their Explanatory

⁴⁹ See CDDH-PTS(2025)12, Key points made by Nina Brennan.

⁵⁰ See CDDH-PTS(2025)12, Key points made by Nina Brennan.

⁵¹ See 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, pp. 4-5. See also CDDH-PTS(2025)12, First Discussions.

⁵² See 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, pp. 1, 4, 5, 8, 9, 11, 12; See also CDDH-PTS(2025)12, Key points made by Nina Brennan.

⁵⁴ See CDDH-PTS(2025)05, Key points made by Thomas Straub citing *Ilias and Ahmed* [GC], *op. cit.*

⁵⁵ 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; 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."

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Memorandum, the updates should also ensure that the instrument is sufficiently flexible and non-prescriptive in its nature.

THE NETHERLANDS / PAYS-BAS

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 significance of](#) the full implementation of the 1951 Geneva Convention relating to the Status of Refugees⁵⁶ (1951 Refugee Convention) and the Protocol relating to the Status of Refugees⁵⁷ (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.⁵⁸

9.

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 person could even be sent to a third state that is not a party to the 1951 Refugee Convention and its 1967 Protocol, provided that it adheres to the relevant international protection principles, especially the principle of non-refoulement as formulated in Article 33 of the 1951 Refugee Convention.](#)⁵⁹

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.](#)

62. [At the same time, the CDDH recalls that, in its jurisprudence, the Court consistently affirmed that State parties to the Convention remain fully responsible under the Convention for all acts](#)

⁵⁶ [Convention relating to the Status of Refugees](#), adopted on 28 July 1951 ("1951 Refugee Convention").

⁵⁷ [Protocol relating to the Status of Refugees](#), adopted on 18 November 1966 ("1967 Protocol").

⁵⁸ [1997 Recommendation](#), preamble.

⁵⁹ *Ibid.*, para. 12.

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(3) [The relevance of the 1997 Recommendation and its Explanatory Memorandum in today's geopolitical and different hybrid contexts](#)

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and omissions of their authorities when fulfilling obligations arising from their membership in an international organisation, including when applying EU law.⁶⁰

66. The CDDH also examined the ongoing process for revising provisions on the safe third country concept, under the APR. This 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.

69. As regards the connection criterion, the European Commission proposed that it no longer be mandatory under EU law, noting that international law does not require a connection.⁶² The European Commission's proposal would allow EU member States to apply the safe third country concept when (i) there is a connection between the applicant and a safe third country in question, or (ii) where the applicant has transited through a safe third country, or (iii) in case of no connection or transit, when there is an agreement or arrangement with a safe third country requiring the examination of the merits of the requests for effective protection made by applicants subject to that agreement or arrangement.⁶³ This safeguard was intended to prevent "orbit situations" and ensure the sustainability of transfers. Two additional safeguards would also apply: the third option would not apply to unaccompanied minors due to their vulnerable status, and a new transparency clause would oblige EU member States to inform the European Commission and other EU member States of any such proposed agreements or arrangements before their conclusion.⁶⁴ The proposal is currently going through the legislative process.

NORWAY / NORVÈGE

Norway would like to refer to the ongoing, and in some instances overlapping, process taking place in the CDDH-Extra meeting this week. Several parts of the CDDH-PTS draft text of the study should remain consistent with the draft outcome document containing elements for a political declaration. This is particularly relevant for the chapters concerning instrumentalization, as well as the CDDH-Extra references to the Court's case law under Article 3 and the concept of safe third countries. As the CDDH-Extra meeting is currently finalising this text, it would be premature to suggest amendments to the PTS document at this stage.

⁶⁰ See *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Şirketi v. Ireland* [GC], appl. no. 45036/98, 30 June 2005, paras. 152-165; *M.S.S. v. Belgium and Greece* [GC], appl. no. 30696/09, 21 January 2011, paras. 338-340; *Michaud v. France*, appl. no. 12323/11, 6 December 2012, paras. 102-104; *Sharifi and others v. Italy and Greece*, appl. no. 16643/09, 21 October 2014, paras. 168-172 (not available in English); *Ilias and Ahmed v. Hungary* [GC], appl. no. 47287/15, 21 November 2019, paras. 152-165. See also CDDH-PTS(2025)05, Key points made by Thomas Straub.

⁶² See CDDH-PTS(2025)12, Key points made by Nina Brennan. See also CDDH-PTS(2026)01, Key points made by Prof Dr Daniel Thym.

⁶³ 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, p. 5.

⁶⁴ See CDDH-PTS(2025)12, Key points made by Nina Brennan.

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