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STEERING COMMITTEE FOR HUMAN RIGHTS

(CDDH)

DRAFTING GROUP ON THE SAFE THIRD COUNTRY CONCEPT

(CDDH-PTS)

Summary of the exchange of views
held on 23 September 2025
at the second CDDH-PTS meeting

1. Introduction

At its second meeting on 23 September 2025, the CDDH-PTS held an exchange of views on the issue of safe third country (STC) concept with:

- Nina BRENNAN, 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, Representative to the European institutions in Strasbourg, UNHCR, presenting the new UNHCR guidance on "International agreements for the transfer of refugees and asylum-seekers;"[1] and
- Christian MOMMERS, Adviser to the Office of the Commissioner for Human Rights, presenting the Commissioner's new report on "Externalised asylum and migration policies and human rights law."[2]

2. Summary of discussions

Key points made by Nina BRENNAN

- Nina BRENNAN presented the European Commission's recent proposal, adopted in May 2025, to amend the European Union (EU) Asylum Procedures Regulation (APR) regarding the application of the safe third country (STC) concept.
- Ms Brennan recalled that the STC concept already exists within the EU acquis and remains optional under EU law. Its application allows an EU member State to reject an asylum application as inadmissible – without examining the application on the merits – on the basis that the person could or should have received or sought protection in a third country considered safe for them. At present, the STC concept is governed by the 2013 Asylum Procedures Directive (APD), which will be replaced by the APR adopted as part of the EU Pact on Migration and Asylum in May 2024 and due to enter into application in June 2026.
- During the negotiations of the Pact, the provisions relating to the STC proved contentious. A compromise was reached, reflected in Article 77 of the APR, under which the European Commission was tasked with reviewing the concept and, where appropriate, proposing amendments by June 2025 – before the Regulation's entry into force. The review had also been requested by several EU member States, and, in May 2024, 15 governments addressed a joint letter to the European Commission calling for a revision of the STC concept to simplify and allow greater flexibility in its application.
- In this context, the European Commission had undertaken a comprehensive and holistic review of the STC concept, drawing on member States' experiences and challenges in applying it. The review revealed an uneven application of the concept across the EU: some member States have not incorporated the concept into national law; others have done so but apply it on the basis of lists or case-by-case assessments; and others, although they

[1] UNHCR, "International Agreements for the Transfer of Refugees and Asylum-Seekers," 7 August 2025.
[2] Commissioner for Human Rights, "Externalised asylum and migration policies and human rights law," 4 September 2025.

have the necessary legal framework, do not apply the concept in practice. Many member States reported difficulties with the criteria for designating a third country as safe and with the connection criteria between the applicant and that country.

- The review also took into account changes already introduced by the APR, which broaden the existing framework. In particular, the Regulation now allows for countries that are not parties to the 1951 Geneva Convention to be designated as safe third countries, provided that they can offer effective protection as defined in EU law. The APR also introduces the possibility to designate a country as safe with exceptions for specific parts of its territory or for clearly identifiable groups of persons. Under a separate Commission proposal concerning the establishment of an EU list of safe countries of origin, it is also proposed that this "designation with exceptions" provision should enter into force before the Pact's application.
- In conducting its review, the Commission considered the requirements set by international law, EU law, and relevant jurisprudence from the European Courts, as well as feedback from EU member States, the European Parliament, UNHCR and civil society. The Commission examined all the elements of the STC concept as defined in the APR, namely the criteria for considering a country safe, the requirement of a connection between the applicant and the third country, the right to an individual assessment of the safety of that country, and the right to an effective remedy. It concluded that there was limited scope for revision overall, as the safety criteria is already aligned with the minimum standards under international law and the procedural guarantees cannot be altered because they are required under EU and international law. Consequently, the review identified only two elements open to amendment: i) the connection requirement and ii) the automatic suspensive effect of appeals against inadmissibility decisions.
- Turning to the connection requirement, Ms Brennan explained that while EU law currently requires a connection between the applicant and the third country, international law does not. A large majority of EU member States had identified this as the main obstacle to applying the concept effectively. The Commission proposed to make this requirement non-mandatory under EU law. Under the proposal, EU member States would have three options when applying the STC concept: 1) they may continue to require a connection if they wish so; 2) they may apply the concept on the basis of the applicant's transit through the third country; or 3) they may apply it without requiring either a connection or transit link, provided that there is an agreement or arrangement with the third country ensuring that transferred individuals' asylum claims will be examined on their merits. This safeguard is intended to prevent asylum-seekers from being left in "orbit situations" and to ensure the sustainability of the transfers. Two additional safeguards are foreseen:
    - First, the third option – applying the concept without connection or transit – would not apply to unaccompanied minors, in recognition of their vulnerable status. For them, the connection or transit requirement would remain, consistent with the existing provisions which allow the application of the STC concept to unaccompanied minors only if it is in their best interests and only if the receiving country provides assurances that the minor will be taken in charge and have immediate access to effective protection.
    - Second, a new transparency clause would oblige member States to inform the Commission and other member States of any such agreements or arrangements with third countries before their conclusion. This measure is designed to enable monitoring of compliance with the safety and designation criteria and to safeguard the proper functioning of the Dublin system.
- With regard to the automatic suspensive effect of appeals against inadmissibility decisions based on the STC concept, Ms Brennan recalled that under the current Regulation, such appeals have an automatic suspensive effect, unlike other inadmissibility grounds. The

proposal would remove this automatic effect in order to bring the STC concept into line with the general rule for other inadmissibility decisions. The Commission considered that international law does not require an automatic suspensive effect in such cases. Applicants would, however, still have the right to request permission from a court to remain pending appeal, thereby preserving their right to an effective remedy. Importantly, appeals against the related return decisions would continue to have automatic suspensive effect whenever a risk of *refoulement* is raised, and this may be invoked at any stage of the procedure.

- In conclusion, Ms Brennan stressed that the Commission was not proposing a wholesome reform of the STC concept but rather very targeted amendments to enhance flexibility for EU member States, facilitate the processing of asylum applications, and ease pressure on asylum systems while maintaining full respect for fundamental rights and safeguards.
- By way of update, she informed that the proposal had been transmitted to the co-legislators. In the Council of the EU, work is ongoing on a compromise text, with drafting sessions currently taking place. In the European Parliament, a Rapporteur has been appointed, and a first technical reading of the text was scheduled for 25 September 2025. Although no definitive timeline for adoption has yet been set, the Danish Presidency has identified this proposal as a priority.

Key points made by Ophélie MARREL

- Ophélie Marrel presented the perspective of the European Network of National Human Rights Institutions (ENNHRI) on the practical application of the STC concept in various member States, focussing on concrete examples illustrating differences in implementation, goods practices identified by National Human Rights Institutions (NHRIs), and challenges encountered in practice.
- ENNHRI brings together 50 NHRIs across Europe. It provides a platform for cooperation and solidarity among its members, support their work, and amplifies their collective voice. Within ENNHRI, the Asylum and Migration Working Group is currently placing particular emphasis on the EU Pact on Migration and Asylum, as NHRIs may in the future be designated as independent monitoring mechanisms to oversee respect for fundamental rights during screening and asylum border procedures.
- Ms Marrel began with the terminology used in national contexts to define the STC concept, and noted that, in several countries, such as Greece, Belgium and Latvia, the national legislation follows the wording of Article 38 of the APD, which explicitly includes the "connection criterion" between the applicant and the safe third country. In other states, such as Germany, the national definition is inspired by the EU Directive but adapted to the national context. In Georgia, legislation in this field is still under development, while in France the STC concept is not regulated under national law.
- Turning to good practices, Ms Marrel described instances where NHRIs have effectively engaged with governments, and where their advice or recommendations had been taken into account in the national approach. She explained that NHRI contributions take various forms, including the provision of expert opinions, participations in consultations, and serving as sources of information for courts:
    - In Germany, the German NHRI took part in consultations initiated by the Federal Ministry of the Interior on the feasibility of conducting asylum procedures in third countries. Following expert hearings held in 2024, the German NHRI concluded that, although such externalised procedures might comply with international and human rights standards, their practical implementation would entail serious risks of human rights violations. These concerns were reflected in the Ministry's final report, published in April 2025, which also took into account the new regulations

introduced under the EU Asylum and Migration Pact.

- In Greece, the Greek NHRI provided evidence-based reports that served as key information for the courts. In 2025, the Greek Council of State annulled a Joint Ministerial Decision designating certain countries as safe for asylum-seekers of specific nationalities, following a preliminary ruling from the Court of Justice of the EU (CJEU).
- In Belgium, the NHRI plays a central role of the national preventive mechanisms under the Optional Protocol to the Convention against Torture (OPCAT), monitoring conditions of detention in immigration detention centres. It holds monthly meetings with public authorities and international and national NGOs to exchange information and discuss practices related to international protection.
- In Latvia, the Ombudsman's Office was consulted in 2025 by the Ministry of the Interior for its opinion on the European Commission's proposal to amend the EU regulations concerning the application of the STC concept. In its opinion, the Ombudsman's Office analysed the potential human rights implications of the proposal, with particular attention to children's rights.
- In Georgia, the Georgian NHRI was closely involved in legislative discussions on the country's new law on international protection and foreigners, which reforms the national asylum framework and will enter into force on 1 October 2025.

- Ms Marrel addressed the challenges identified by NHRIs in relation to the STC concept, which include non-compliance with international or national law, risks of human rights violations, and questions of practical feasibility of the STC concept:
    - An example of non-compliance with national law was found in France, where the French NHRI issued an opinion in December 2017 on the introduction of the STC concept into French legislation. Following consultation, the proposal to include this concept was ultimately abandoned, as the French Constitutional Council had ruled in 1993 that asylum-seekers in France have both a fundamental right to have their application examined and a provisional right to remain during that examination. The application of the STC concept would have undermined these constitutional guarantees.
    - A further example concerned possible human rights violations in Belgium where, in March 2023, the Belgian Parliament requested the Belgium NHRI's opinion on a legislative proposal inspired by the "Danish model," which sought to externalise asylum procedures to a third country. The NHRI raised several human rights concerns, warning that such an approach risked undermining fundamental standards of protection and responsibility-sharing if the STC concept were applied in this way.
    - In Germany, the NHRI also drew attention to an instance of non-compliance with EU Law. Since May 2025, the Minister of the Interior had ordered that asylum-seekers arriving at land borders be refused entry, on the basis of national legislation which requires refusal of entry form a safe third country. According to the German NHRI, this practice violates European law – a conclusion confirmed by the Administrative Court of Berlin.
- In conclusion, Ms Marrel underlined that NHRIs across Europe engage with the STC concept in a variety of ways. However, the application of the concept continues to raise significant challenges, including questions on the compatibility with national and international legal frameworks, serious human rights implications, and practical implementation difficulties. Looking ahead, the active involvement of NHRIs remains essential to ensure that human rights concerns are duly considered in any application of the STC concept.

Key points made by Eleonora TESTI

- Eleonora Testi presented the views of the European Council on Refugees and Exiles (ECRE) on key lessons and challenges in the application of the STC concept across Council of Europe member States.
- Ms Testi recalled the STC concept and emphasised the discussions around the concept must be understood within the broader trend of externalisation of migration and asylum policies. Externalisation, while not legally defined, generally refers to the transfer of responsibilities for migration control, border management, asylum processing, and return procedures to third countries. Many such policies have raised serious human rights concerns, citing examples 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. Several Council of Europe member States have expressed interest in pursuing similar arrangements in the areas of asylum processing, border management, and return.
- Turning to current practices and country examples, Ms Testi noted that the STC concept has never been implemented on a large scale within Europe, with one exception. The most significant precedent remains the 2016 EU-Türkiye Statement, which permitted the return of certain asylum-seekers from Greece to Türkiye. Although initially associated with a reduction in irregular arrivals, several other contextual factors might have contributed to this effect, including the closure of the Western Balkans route, tighter border controls, and deteriorating conditions on the Greek islands. The scheme's implementation remained limited in terms of returns to Türkiye realised in practice, with most Syrians staying in Greece. At the same time, it generated significant human rights concerns, such as overcrowding in camps, misapplication of the STC concept, and the suspension of returns by Greek courts.
- Ms Testi explained that many Council of Europe member States have nevertheless integrated the STC concept into their national asylum frameworks, albeit with significant differences in how it is applied – whether through pre-established lists of safe countries or on a case-by-case basis. Drawing on examples from ECRE's database, she observed that Portugal applies the STC concept inconsistently, sometimes treating mere transit as sufficient to establish a connection; France does not apply the concept at all as it is deemed incompatible with constitutional guarantees; The Netherlands makes use of the concept, but its application is effectively constrained by judicial scrutiny of reception conditions and protection guarantees in the designated third country; in Ireland, the High Court ruled in April 2024 that the UK's designation as a safe third country was unlawful under EU law, leading to legislative amendments concerning returns to the UK in cases involving family links.
- Among other examples, Ms Testi referred to the UK-Rwanda Migration and Economic Development Partnership, which envisaged the transfer of asylum seekers arriving irregularly in the UK to Rwanda for claim processing and potential protection there. The scheme faced extensive legal challenges, and, in November 2023, the UK Supreme Court struck it down, finding that Rwanda could not provide sufficient protection guarantees. In Greece, the Asylum Code incorporates the STC concept and has been applied to Türkiye and other countries. However, despite Türkiye's suspension of readmissions, Greek authorities have continued to issue inadmissibility decisions. In October 2024, the CJEU ruled that such decisions cannot stand when transfer is impossible. The Greek Council of State subsequently annulled the Türkiye designation in February 2025, citing insufficient reasoning, yet the government re-adopted it in April 2025 on the basis of selective sources, prompting new challenges.

- Ms Testi also discussed the Italy-Albania Protocol of 2023, which, while not a direct application of the STC concept, represents another form of externalisation. Under this agreement, Italy transfers certain migrants to facilities in Albania operating under Italian jurisdiction. The scheme became operational in 2024 but quickly encountered judicial challenges: Italian courts refused to validate the detention of migrants in Albania, citing the CJEU case law on safe country designations. In response, the Italian government amended its law to allow for the transfer of persons already present on Italian territory to Albania as part of return procedures. However, the measure has been challenged before the CJEU for possible incompatibility with EU law.
- A number of European countries – including Denmark, Germany, and Switzerland – have recently examined or proposed UK-Rwanda style arrangements to process asylum seekers in third countries with which they have no prior connection, although none has yet been implemented on a large scale.
- Discussing the EU legal framework, Ms Testi recalled that under the 2013 EU Directive, a third country can be designated as safe only if it offers protection in line with the 1951 Refugee Convention. The APR, however, lowers this threshold by requiring only "effective protection."
- The European Commission's proposal of May 2025 to amend the APR introduces two major changes: removal of the mandatory connection criterion between the applicant and the third country, and removal of the automatic suspensive effect of appeals against inadmissibility decisions based on the application of the STC concept. From ECRE's perspective, these developments raise serious concerns, regarding the risk of a gradual erosion of protection standards, increased legal uncertainty, and disproportionate impacts on vulnerable groups. The proposed relaxation of the connection criteria poses primarily practical rather than legal risks, since the absence of a meaningful link could make it impossible for asylum-seekers to access effective protection or sustain a livelihood in the designated third country. Ms Testi warned that expanding the use of bilateral agreements between Council of Europe member States and third countries risks de-harmonising asylum systems across Europe and increasing secondary movements. Particular concern was expressed for vulnerable persons, including those with hidden vulnerabilities such as survivors of human trafficking, gender-based violence or torture, whose vulnerabilities may not be immediately detected during the procedure and who may face heightened risks if transferred to a third country. Despite the prohibition of such outcomes, there remains a danger that some applicants will be left in legal limbo, declared inadmissible yet not admitted by the third country.
- In conclusion, Ms Testi underlined that Council of Europe member States retain the obligation to ensure that any application of the STC concept, or any externalised asylum procedure, fully respects human rights, provides access to protection, and does not undermine the integrity of territorial asylum. While international cooperation on migration management may be legitimate and, in some cases, necessary, it must never erode fundamental protection standards. The STC concept should remain a narrowly circumscribed tool, applied only with clear safeguards and subject to robust monitoring to ensure compliance with human rights and international protection standards.

First Discussions

- During the discussions, several delegations raised questions concerning the relationship between the ongoing developments at the EU level, the work of the CDDH-PTS, and the possible review of the 1997 Committee of Ministers Recommendation No. R(97)22 on the application of the STC concept (1997 Recommendation), in particular how greater harmonisation could be achieved between the EU process and the work carried out before

the CDDH-PTS. Questions were raised if it would be useful to review the 1997 Recommendation at this stage, given the intensive cooperation already under way in Brussels. In response, the representative of the European Commission indicated that the Commission did not currently have a specific position on the potential revision of the 1997 Recommendation, as its focus remained on implementing its own legislative proposal. The ENNHRI representative underlined that harmonisation remains a major challenge, since EU member States do not share a uniform definition of asylum or of "safe" countries, underlining that France and Germany for instance maintain different lists of safe countries of origin. While the EU Pact may improve coherence, there is, as yet, no real harmonisation within the EU. The ECRE representative stated that ECRE also had no formal position on whether the 1997 Recommendation should be updated. However, she pointed out that EU and Council of Europe membership do not fully overlap, and that some non-EU member States might apply the STC concept differently. In that regard, it could be useful to revisit the general standards set out in the 1997 Recommendation in light of recent case law of the European Court of Human Rights (ECtHR).

- The Chair asked whether the holistic review carried out by the European Commission had taken the 1997 Recommendation into account and whether any tensions had been identified with the Commission's proposal. In response, it was confirmed that the 1997 Recommendation had been considered in the working document of the European Commission accompanying the proposal, and that the assessment had found no inconsistency between the two.
- The Chair also inquired whether the European Commission's review had examined the position of vulnerable groups and gender-related considerations, and whether these issues had been raised during the consultation process. The European Commission's representative confirmed that these aspects had indeed been discussed, noting that the Commission's proposal includes a specific exemption for unaccompanied minors, identified as the most vulnerable group. Moreover, the Regulation maintains the requirement of an individual assessment in every case to determine whether the third country is safe for the applicant in light of their personal circumstances.
- A further question was addressed to the representatives of ENNHRI and ECRE regarding the practical use of the 1997 Recommendation by NHRIs and NGOs in their monitoring and advocacy work and whether some recent examples of externalisation practices should be examined further by the CDDH-PTS. In the examples illustrated by the ENNHRI's representative, NHRIs had not relied on the 1997 Recommendation in their analysis or advocacy, instead basing their assessments on national law and the case law of national jurisdiction and the ECtHR. The ECRE representative noted that, among the examples she had presented, the UK-Rwanda arrangement and the application of the STC concept in Greece are particularly relevant as both raise questions as to whether the receiving country can actually provide effective protection. She emphasised that, in the absence of such guarantees, national or European courts could block transfers, potentially leading to tensions with the judiciary and raising rule of law concerns.
- Greece stressed the importance of the EU process for the CDDH-PTS work. As EU legislation will soon take the form of a Regulation rather than a Directive, EU member States will have less discretion in its implementation, which should be taken into account when considering a revision of the 1997 Recommendation. It was also clarified that the Greek Council of State had annulled the previous list of safe third countries not because the list itself contravened national, EU or international law, but because its reasoning was insufficiently substantiated. After these shortcomings were corrected, a new list was adopted and found to be in conformity, underlining that there is no national or international case law suggesting that the drafting of such lists is contrary to international or EU law.

Key points made by Andreas WISSNER

- Andreas Wissner presented the new UNHCR Guidance "International agreements for the transfer of refugees and asylum-seekers," published in August 2025 as part of a series of UNHCR publications addressing how states can respond to contemporary challenges in refugee protection.
- Mr Wissner emphasised that the question of international transfer arrangements is of particular importance at a time when many states are exploring bilateral or regional mechanisms to manage irregular movements of migrants or refugees, including through agreements allowing for the transfer of asylum-seekers to third countries. Such measures have direct implications for the protection and wellbeing of refugees.
- The transfer of asylum-seekers overlaps conceptually and legally with the STC concept. The UNHCR Guidance provides a rights-based framework for the lawful and humane use of such arrangement. The Guidance responds to the growing scale and complexity of refugee and migrant movements and offers practical direction to states on how to operate asylum systems effectively while protecting refugees and maintaining border management controls.
- UNHCR's position is that well-resourced and properly managed asylum systems provide fair, efficient, and humane responses to people fleeing persecution, conflict, or serious human rights violations. While UNHCR does not promote transfer arrangements and maintains that asylum-seekers should be ordinarily processed in the territory of the state where they arrive, it recognises that some states may choose to establish transfer agreements. In such cases, there must be designed and implemented in full compliance with international law and must ensure the protection of the rights of asylum-seekers and refugees.
- The new Guidance sets out the conditions under which transfers may be conducted safely and legally. 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, ensuring that these rights are effectively respected and providing material and financial support. UNHCR highlights the importance of international cooperation and genuine responsibility-sharing as essential for lawful and practical transfers arrangements. UNHCR's aim is to support states in upholding international protection wherever refugees are located and to strengthen international cooperation from the earliest stages of displacement. Increased support from wealthier states is therefore important, particularly to address the root causes of these movements and to assist countries that host the majority of the world's refugees.
- The Guidance builds on UNHCR's long-standing positions on onward movements and the transfer of refugees and asylum-seekers, first articulated in Executive Committee (ExCom) Conclusion No. 58 and further elaborated in subsequent guidance documents. The new publication identifies the key legal conditions that must be met for international transfer agreements to be lawful:
    - First, transfer arrangements between states are best governed by legally binding public agreements, challengeable and enforceable in a court of law, including by the affected refugees and asylum-seekers. Transfer agreements should clearly articulate the obligations of each party, ensuring predictability, enforceability and legal certainty for those affected.
    - Second, such transfer agreements should be limited in their personal scope, identifying clearly defined categories of persons eligible for transfer. UNHCR considers that three categories may, in principle, be transferred: 1) refugees who

previously enjoyed protection in another state and voluntarily moved onwards; 2) asylum-seekers who could have claimed or received protection in a previous state; and 3) asylum-seekers with no prior connection to another state, provided there are measures to ensure the dignity and sustainability of their transfer. While international law does not require a connection between the individual and the receiving state, UNHCR recommends that such a connection be sought as a matter of reasonableness and sustainability.

- Third, there should be guarantees of access to protection in the destination country, both before and after the transfer. Before the transfer, individuals must be given the opportunity to challenge the presumption of safety of the receiving country, particularly those with specific risk profiles, such as traumatised persons or unaccompanied children, who should never be transferred. After the transfer, the receiving state must guarantee access to an asylum procedure, lawful stay during that procedure, and, if refugee status is granted, a progressive realisation of the rights associated with protection under the 1951 Refugee Convention.
- Fourth, there should be continuous monitoring of compliance with the agreed standards by both states. The transferring state retains responsibility to ensure that the receiving state continues to meet protection standards, and must suspend or terminate the agreement if these are no longer fulfilled.
- Finally, the receiving country should ensure adequate standard of treatment and conditions for those transferred, enabling their self-reliance and inclusion.

- Mr Wissner also clarified UNHCR's understanding of "externalisation." He stated that externalisation occurs when states attempt to shift rather than share responsibility for refugee protection. There is a need for fair and equitable distribution of refugees among states, warning that no country should be able to offload its protection responsibilities by paying another state to host asylum-seekers. Any lawful transfer arrangement must be accompanied by predictable, adequate, and sustainable financial and technical support for the receiving state, particularly where its capacity to provide protection is limited. Such support is essential to ensure that transferred persons receive adequate services and to maintain global solidarity.
- The integrity of the international protection system depends on maintaining the right to seek and enjoy territorial asylum in the transferring state. Individuals must retain the right to challenge transfer decisions before a court, and some categories of persons should continue to have access to asylum in the transferring state itself. States should therefore stop diverting their international protection responsibilities through transfer schemes that lack adequate safeguards. UNHCR continues to oppose externalisation practices that shift responsibility to other states without ensuring adequate protection, as this contravenes international law and put asylum-seekers and refugees at risk.

Key points made by Christian MOMMERS

- Christian Mommers presented the Commissioner's new thematic report on "Externalised asylum and migration policies and human rights law," published in September 2025. He explained that the report aims to contribute to current policy debates by assessing how externalisation practices can be made compliant with human rights standard and by identifying the safeguards needed to ensure such compliance.
- The report was prepared in a context where an increasing number of Council of Europe member States are aligning their policies around externalisation measures and where new proposals and agreements in this field continue to emerge. It was therefore timely to evaluate these developments through a human rights lens. The report takes a systematic approach,

assessing these policies against international hard and soft law standards, in coordination with the work of UNHCR and the EU Agency for Fundamental Rights (FRA).

- Mr Mommers explained that the report identifies three main forms of externalisation:
  - The transfer of asylum procedures to other countries;
  - The externalisation of return procedures, including through the establishment of "return hubs;" and
  - The provision of financial or operational support to third countries to prevent irregular migration to Europe.
- The overall finding is that externalisation inherently increases the risk of human rights violations, particularly with regard to *refoulement*, denial of access to asylum, arbitrary detention, lack of effective remedies, and other procedural deficiencies. Although externalisation could in theory be carried out in a rights-compliant manner, current proposals fall well short of the necessary safeguards. There report therefore puts forward four main recommendations:
  1. Adopt a precautionary approach, requiring prior assessment of human rights risks and identification of measures to mitigate them;
  2. Establish clear and non-negotiable principles, notably the prohibition of *refoulement* and exposure to torture, prevention of arbitrary detention, and the protection of children and other vulnerable persons;
  3. Ensure that all cooperation with third countries in the areas of asylum processing, returns, and border control is conditional on these safeguards being firmly in place; and
  4. Enhance transparency, monitoring, and accountability, for example by relying on formal, legally binding agreements with clear obligations, termination clauses, and provisions for remedies and investigations in case of violations.
- Turning to the relevance of these findings for the STC concept, the Commissioner's Office has mainly focused on the use of "safe country" designations in the context of asylum and return procedures. While early practices concerned the transfer of individuals to countries through which they had transited, recent initiatives increasingly involve transferring people to countries with which they have no prior link. This new trend presents an even higher risk of non-compliance. Nonetheless, the minimum standards identified in the case law of the ECtHR – on the effectiveness of asylum procedures, the right to a remedy, and protection against *refoulement* – should apply equally, whether the person has previously been in the country concerned or not.
- Implementation becomes more complex when an additional country is involved, as this introduces new layers of responsibility and potential gaps in protection. The countries to which transfers are envisaged often offer weaker protection systems, including limited asylum and judicial capacity. The UK Supreme Court's judgment on the UK-Rwanda agreement provides a useful illustration of these risks and of what would be required to make a country genuinely "safe," such as sustained investment in reception conditions and asylum infrastructure. The judgment emphasises that this is complex and would take considerable time and therefore this should caution against notions that a third country could easily be made "safe" through support measures.
- The Commissioner's report also examines situations where states implement asylum or return procedures extraterritorially under their own jurisdiction. In some cases, rescue operations are followed by the immediate transfer of rescued persons to third countries. This may create tensions between maritime obligations – such as prompt disembarkation in a place of safety – and migration control objectives.
- Mr Mommers addressed the connection criterion, noting that while it is not a strict requirement under international law, it carries important human rights implications. The lack of connection to the receiving country increases the risk of human rights violations, including exposure to

exploitation, violence, and social exclusion. Such risks are particularly acute for vulnerable persons, and therefore, the report concludes that children – including accompanied children – and other vulnerable groups should be excluded from externalised procedures altogether.

- Responsibility-shifting is incompatible with both the spirit and letter of the 1951 Refugee Convention and with states' border duty to perform international obligations in good faith. Using the STC concept to transfer asylum processing to countries with inadequate protection systems effectively amounts to responsibility-shifting.
- From a systemic perspective, Mr Mommers cautioned that the expansion of the STC concept risks undermining access to territorial asylum in Europe. If the connection criterion were completely abandoned and asylum applications could be declared inadmissible solely on the basis that another "safe" country exists, virtually all asylum seekers in Council of Europe member States could in theory be rejected at the admissibility stage, rendering territorial asylum ineffective.
- Finally, he highlighted the interplay between the STC concept and externalised return procedures. The Commissioner advocates that such externalised returns, including through "return hubs," be used only for persons who have already had access to a fair and efficient asylum procedure decided on the merits and subject to judicial review. In line with FRA's position, transfers to return hubs should be limited to cases where they offer a genuine added value, such as facilitating voluntary or assisted returns, and should never result in people being placed in legal limbo. He reiterated that there is now a broad evidence base about the human rights risks of externalisation, most recently also set out in a report by the UN Special Rapport on the human rights of migrants.

Second Discussions

- During the discussions, delegations focused primarily on the 1997 Recommendation, questioning the last speakers on whether it remains adequate in light of the significant legal and policy developments of recent decades, and whether it should be updated to include more detailed guidance – particularly regarding cooperation, monitoring, and procedural safeguards. Germany asked whether the requirement that the transferring state monitor the receiving country's compliance with legal obligations under transfer arrangements stems from binding international law.
- In response, Mr Mommers explained that the Commissioner has no official position on whether the 1997 Recommendation should be revised. However, the Commissioner's mandate is to promote higher human rights standards, and any future review of the Recommendation could be an opportunity to strengthen its human rights dimension. The Commissioner's report did not address the 1997 Recommendation directly, as it focused on externalisation practices more broadly, but the discussion is timely given the changes since 1997, including the evolution of ECtHR jurisprudence. He observed that while the principles of the 1997 Recommendation remain valid, they are rather general and could be supplemented with more practical guidance to help member States operationalise them in current contexts.
- On the issue of monitoring, Mr Mommers cautioned against an overly legalistic approach but emphasised that monitoring mechanisms are an essential component of any system designed to uphold human rights standards. Ensuring that appropriate safeguards are in place and effectively implemented necessarily requires some form of systematic monitoring, and it would therefore make sense to reflect this in any future work on the Recommendation.
- Speaking on behalf of UNHCR, Mr Wissner noted that his office has no specific position on the 1997 Recommendation, which he described as a high-level and non-contentious instrument. However, since its adoption almost 30 years ago, significant legal and policy

developments have taken place, especially within the EU, which has elaborated a detailed acquis on the STC concept. He stressed that while discussions on this topic have primarily taken place in Brussels, the Council of Europe framework is broader, encompassing states that are not EU members and sometimes include countries involved in STC arrangements. This wider European perspective, grounded in the European Convention on Human Rights, could provide useful complementary guidance to EU standards. Mr Wissner noted that forthcoming amendments to EU law, including changes to the connection criterion and to remedies available under the APR, may create space for the Council of Europe to provide additional guidance to ensure continued alignment with human rights standards.

- On the question of cooperation and monitoring, Mr Wissner agreed that these elements are essential in managing migration and transfer arrangements. References to them in future Council of Europe work would be highly beneficial, provided they are clearly defined and made operational. Responding to Germany's specific question, he explained that the requirement for monitoring by the transferring state is included in UNHCR's Guidance and that this obligation is based on the principle of *non-refoulement*, which requires the transferring state to ensure that the individual being transferred is not at a real risk of persecution or other serious human rights violations in the receiving country.
- Finally, Mr Mommers added that within the Council of Europe, not all member States are sending countries – some may act as receiving states under transfer arrangements or host facilities operated by other member States on their territory. This dimension raises additional legal and practical questions about shared responsibility and jurisdiction, and this might be taken into account in the CDDH-PTS's future discussions.