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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**

{COM(2025) 259 final}

1. Background

Article 77 of the Asylum Procedure Regulation (2024/1348) ('APR')¹ requires the Commission to review the safe third country concept ('STC concept') and, where appropriate, proposing any targeted amendments by 12 June 2025, thus before the APR applies. On this basis, the Commission carried out a holistic review of the STC concept.

This Staff Working Document ('SWD') presents the review of the STC concept on which the Commission services based the related proposal of targeted amendments of the APR.

When applying the STC concept, Member States may reject asylum applications as inadmissible without examining whether the persons meet or not the conditions for being granted protection in the EU. The STC concept may be applied as part of the border procedure.

The Commission services adopted a holistic approach in reviewing the STC concept. They first considered the Member States' experiences and challenges in applying the STC concept so far, as voiced in different fora and characterised in different public reports and studies (Section 2). Next, they examined whether international law (the 1951 Geneva Convention and the 1950 European Convention of Human Rights) and EU primary law (including the Charter of Fundamental Rights of the EU), allow for further revisions to the conditions for applying the STC concept and its legal safeguards, with the aim of facilitating its application by Member States (Section 3). The relevant jurisprudence of the European Court of Justice ('CJEU') and of the European Court of Human Rights ('ECtHR') is examined in the same context. Finally, the Commission services consulted the Member States, the European Parliament, UNHCR and civil society representatives on the scope for revising the STC concept with a view to simplifying its practical application in EU Member States.

As a result of this review, the Commission services concluded that there is scope to revise the connection criterion, as it is not a requirement under international law, and the automatic suspensive effect of the appeal. However, there is no scope for revision regarding the criteria for 'safety' of the third country, as they are already aligned with the minimum standards under international law, or other aspects linked to due process, including the individual assessment, as these are requirements under EU and international law and jurisprudence.

2. Application of the STC concept in the EU Member States: legal framework, patterns, and challenges

The STC concept was developed in international law the early 1980s, in a context of a surge in mixed migration flows. Its purpose was to allow the countries most affected by the flows to transfer asylum-seekers to third countries where they could receive protection that met international standards.

¹ 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, OJ L, 2024/1348, 22.5.2024.

In the framework of the EU Common European Asylum System, the application of the STC concept is optional². When applied, it essentially means that Member States may reject asylum applications as inadmissible - i.e., without examining whether the persons meet or not the conditions for being granted protection in the EU - whenever the applicants could or should have sought international protection in a third country that is considered safe, both in general terms and for the specific situation of the persons concerned.

Currently the application of the STC concept is governed by the Asylum Procedures Directive (2013/32/EU) ('APD')³. According to Article 33(2)(c) of the APD, Member States may declare applications inadmissible based on the STC concept where the following conditions are met:

1. The third country must meet the conditions for being considered '**safe**', as set out in Article 38(1) of the APD. In essence, there should be no risk of persecution or of serious harm in that third country in general; there must be the possibility to request refugee status and, if found to be a refugee, to receive **protection** in accordance with the 1951 Geneva Refugee Convention; and the principle of *non-refoulement* must be respected.
2. The Member States must establish the existence of a **connection** between the applicant and the third country, meaning that there must be a link between the asylum-seeker and the STC that makes it reasonable to transfer the applicant to that STC. Article 38(2) of the APD requires Member States to lay down in national legislation "rules requiring a connection between the applicant and the third country concerned on the basis of which it would be reasonable for that person to go to that country".
3. The Member State intending to apply the STC concept must respect all due process guarantees established by the APD. Article 38(2)(c) of the APD establishes that Member States must lay down in national law guarantees for an **individual, case-by-case assessment** of whether the country is safe for each applicant concerned, as well as the possibility for the applicant to challenge in court both the existence of a connection to the third country in question and the fact that the country would be safe given his/her specific circumstances. The same provision requires Member States to lay down in national legislation a **methodology** for the competent authorities to verify that the safe third country concept may be applied to a particular country or to a particular applicant, which shall include a case-by-case consideration of the safety of the country for a particular applicant and/or national designation of countries considered to be generally safe.

² This is the case under both the Asylum Procedures Directive (2013/32 – see below) and the Asylum Procedures Regulation (2024/1348 – see above).

³ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), OJ L 180, 29.6.2013, pp. 60–95.

In practical terms, the application of the STC concept by EU Member States has been uneven so far⁴. Three Member States do not have the STC concept covered in national legislation⁵. All other Member States have the concept included in national legislation, but there are differences in terms of application: five Member States adopted lists of safe third countries⁶, in twelve Member States the concept is applied only on a case-by-case basis⁷, and six Member States do not apply the concept in practice⁸. (See in Annex a table with the situation country by country).

Member States have signalled in various EU fora that they are confronted with **common challenges in the application of the STC concept**. Some challenges relate to the conditions that must be met under the APD in order to apply the STC concept, including satisfying the conditions for designating a third country as ‘safe’ and proving the existence of a connection. Many Member States have signalled that the threshold in the APD for applying the STC is too high. Other challenges relate to the difficulty to establish collaboration with third countries for the application of the concept. In particular, some Member States have noted that the application of the STC concept vis-à-vis third countries risks negatively affecting their bilateral relations with those countries.

The STC concept was revised as part of the **Pact on Migration and Asylum**, which was adopted in May 2024. The Asylum Procedure Regulation (2024/1348) (‘APR’), which will apply from 12 June 2026, introduced several **changes to the STC rules**, aimed at allowing for a broader and more flexible applicability of the STC concept. These include:

- (i) The widening of the criteria for designating a third country as ‘safe’ and, in particular, allowing countries that have not subscribed to the 1951 Geneva Refugee Convention to also be designated as STCs, as long as they can ensure ‘**effective protection**’ as defined in Article 57(2) of the APR.
- (ii) An explicit reference to **family links and stay in the third country as possible indications of a connection** (recital 48 APR).
- (iii) The option to designate a third country as ‘safe’ with **exceptions for parts of the territory or clearly identifiable categories of persons** (recital 46 and Article 59(2) APR)⁹.

⁴ See for example EUAA (2022): [Applying the Concept of Safe Countries in the Asylum Procedure](#); EUAA: [Who is Who - Who is Who in International Protection in the EU+: Countries Applying the Concept of Safe Countries in the Asylum Procedure](#) – last update 4 October 2024. See also Osso, B., 'Unpacking the Safe Third Country Concept in the European Union: Borders, Legal Spaces, and Asylum in the Shadow of Externalization', *International Journal of Refugee Law*, Vol. 35(3), October 2023. Thym, D., *Expert Opinion on Legal Requirements for Safe Third Countries in Asylum Law and Practical Implementation Options*, April 2024.

⁵ FR, IT, PL.

⁶ BG, EE, DE, EL, HU.

⁷ AT, BE, CY, DK, FI, HR, IE, LV, LT, MT, NL, SE.

⁸ CZ, PT, RO, SK, SI, ES.

⁹ The Commission recently proposed to bring forward the application of Article 59(2) APR and Article 61(2) APR, concerning the possibility to designate safe countries of origin and safe third countries with territorial and/or category exceptions. See Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level, COM(2025) 186 final of 16.4.2025.

- (iv) The introduction of a **presumption of safety** for third countries with which the EU has concluded an STC agreement pursuant to Article 218 TFEU (Article 59(7) APR).
- (v) The introduction of the **possibility to adopt a common list of STCs** designated at EU level - without precluding the possibility for the Member States to designate additional STCs at national level (recital 81 and Articles 60, 63 and 64 APR).

3. Scope for revision under international and EU primary law

The STC concept is not explicitly regulated by the *1951 Geneva Refugee Convention*¹⁰ or by the *1950 European Convention on Human Rights*¹¹, although several of their provisions, particularly the principle of *non-refoulement*, are directly relevant to its application (including as interpreted for instance by the European Court of Human Rights). In the absence of binding provisions laid down in international conventions on the STC concept itself, the international organisations mandated to provide guidance on the application of the latter issued recommendations on the conditions for the application of the STC concept, to guide its application in a manner consistent with relevant provisions of these Conventions as interpreted by relevant courts and bodies.

In Conclusions adopted in 1979, UNHCR Executive Committee noted that “where it appears that a person, before requesting asylum, already has a connection or close links with another state, s/he may if it appears fair and reasonable be called upon first to request asylum from that state”. In Conclusions adopted in 1989, UNHCR Executive Committee underscored that “where refugees and asylum-seekers move in an irregular manner from a country where they have already found protection, they may be returned to that country”¹². The Council of Europe gave recommendations on the application of the STC concept in the *1997 Guidelines on the application of the safe third country concept*¹³. UNHCR published more detailed recommendations on the conditions for the application of the STC concept in the *2018 Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries* (‘UNHCR 2018 recommendations’)¹⁴. Finally, UNHCR updated its recommendations on the application of the STC concept in the context of the legislative process for the adoption of the APR¹⁵.

The Commission services examined the scope for revising the conditions for the application of the STC concept, taking into account the above (non-binding) recommendations. The Commission services took a more holistic view of the concept, considering broader factors to determine whether there is scope for greater flexibility. In this context, the Commission services also reviewed the **due process guarantees** available to applicants in the application of the STC concept by Member

¹⁰ <https://www.unhcr.org/about-unhcr/overview/1951-refugee-convention>.

¹¹ <https://www.echr.coe.int/european-convention-on-human-rights>

¹² EXCOM Conclusion No. 58 (XL) 1989, para. (f).

¹³ [Recommendation N° R \(97\) 22 of the Committee of Ministers to Member States containing Guidelines on the Application of the Safe Third Country Concept | Refworld](#)

¹⁴ [Legal considerations regarding access to protection and a connection between the refugee and the third country in the context of return or transfer to safe third countries | Refworld](#)

¹⁵ UNHCR, Comments on the European Commission's Proposal for an Asylum Procedure Regulation, COM (2016) 467, April 2019: refworld.org/legal/intlegcomments/unhcr/2019/en/122595.

States, particularly the **individual assessment** of safety based on the specific circumstances of each applicant, as well as the legal safeguards related to the **right to appeal/effective remedy**.

(a) Criteria for designating a third country as safe

As regards the conditions for the designation of a third country as ‘safe’, UNHCR 2018 recommendations were that the third country should:

- (re)admit the person;
- grant the person access to a fair and efficient procedure for determination of refugee status and other international protection needs;
- permit the person to remain while a determination is made; and
- accord the person standards of treatment commensurate with the 1951 Convention and international human rights standards, including – but not limited to – protection from *refoulement*;
- where she or he is determined to be a refugee, s/he should be recognised as such and be granted lawful stay.

The criteria recommended by the Council of Europe in the *1997 Guidelines on the application of the safe third country concept*¹⁶ are similar:

- 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.”

In relation to the Commission’s proposal for the adoption of an Asylum Procedure Regulation of 2016, UNHCR recommended the following criteria for designating a third country as ‘safe’¹⁷:

- access to a fair and efficient asylum procedure and a correct determination of refugee status;
- taking into account asylum seeker’s vulnerabilities;

¹⁶ As cited above.

¹⁷ UNHCR, Comments on the European Commission's Proposal for an Asylum Procedure Regulation, COM (2016) 467, April 2019: refworld.org/legal/intlegcomments/unhcr/2019/en/122595.

- a right to family reunification for recognised refugees;
- a right of legal residence (rather than only a right to remain);
- access to reception facilities and the labour market (rather than only to means of subsistence).

It should be noted that UNHCR therefore complemented its 2018 recommendations on the safety conditions for the designation of an STC and added, in particular:

- referral of the transferred vulnerable applicants for support in the third country;
- offering the transferees a right to residence, rather than only the right to remain; and
- full access to the labour market and to reception facilities, rather than limiting reception conditions to covering only basic needs ('means of subsistence').

With these additional requirements, UNHCR aims to further secure the sustainability of the transfers based on the STC concept and to reduce the incentives for transferred individuals to engage in secondary movements to the Union.

For the purposes of the review, the Commission services have assessed the safety conditions of the APR and UNHCR recommendations.

Article 59(1) of the APR establishes four conditions of 'safety' for the designation of a third country as 'safe', which can be summarised as follows: no risk of persecution, no risk of serious harm (within the meaning of the Qualification Regulation¹⁸ and the corresponding provisions in international refugee and human rights law); no risk of *refoulement* (in the third country itself and with respect to the possibility of a further transit to another third country or country of origin); and the possibility to request and, where conditions are fulfilled, to receive 'effective protection' as defined in Article 57 of the APR.

The notion of **effective protection**, as laid down in Article 57 of the APR, was introduced, *inter alia*, to allow the application of the STC concept vis-à-vis countries that are not signatories of the 1951 Geneva Refugee Convention. The question is whether the notion of 'effective protection' is in line with international law and, whether there is scope or need for adjusting it to facilitate the application of the STC concept by Member States.

According to Article 57 of the APR, 'effective protection' means that the third country should provide:

- the right to remain on the territory of the third country in question;
- access to means of subsistence sufficient to maintain an adequate standard of living with regard to the overall situation of that hosting third country;
- access to healthcare under the conditions generally provided for in that third country;

¹⁸ Regulation (EU) 2024/1347 of the European Parliament and of the Council of 14 May 2024 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted, amending Council Directive 2003/109/EC and repealing Directive 2011/95/EU of the European Parliament and of the Council, OJ L, 2024/1347, 22.5.2024

- access to education under the conditions generally provided for in that third country; and finally,
- effective protection until a durable solution can be found.

There has been a debate¹⁹ as to whether the condition that the STC should provide “means of subsistence sufficient to maintain an adequate standard of living” goes beyond what refugees are entitled to under the 1951 Geneva Refugee Convention. Ultimately, the debate revolves around whether the transferred person should be given full or limited access to gainful employment and social benefits in the third country.

UNHCR observed in the context of its 2018 recommendations that access to employment and social benefits does not need to be immediate upon transfer to the third country. According to UNHCR 2018 recommendations:

- (a) the right to self-employment under Article 18 of the 1951 Convention may be delayed for a limited period of time, but it cannot be denied over the long-term because of government delays in the asylum procedures, and
- (b) once it is determined the person is a refugee, s/he should be granted lawful stay and have access to the corresponding rights of the 1951 Convention.

A similar logic should apply *mutatis mutandis* in third countries that do not apply the 1951 Geneva Convention, but should still provide ‘effective protection’. However, UNHCR recommendations made in relation to the adoption of the APR state that the third country should ensure full access to the labour market immediately, rather than providing only “means of subsistence”.

According to recital 51 of the APR, “access to means of subsistence sufficient to maintain an adequate standard of living” should be understood as “including access to food, clothing, housing or shelter and the right to engage in gainful employment, for example through access to the labour market, under conditions not less favourable than those of non-nationals of the third country generally in the same circumstances.”

This is aligned with the requirements of the 1951 Geneva Convention. Essentially, the rights secured by the Geneva Convention for refugees *legally present on the territory* are at the level of “the most favourable treatment accorded to nationals of a foreign country in the same circumstances”, not the same as those for nationals. This applies to the right to engage in wage-earning employment (Article 17 of the Geneva Convention), the right to housing (Article 21 of the Geneva Convention), and the right to self-employment (Article 18 of the Convention). Only for the right of access to education (Article 22) and right to social security and benefits (Article 24) must legally present refugees be given the same treatment as nationals.

It should also be noted that the Convention does not require granting refugees the right to residence, as UNHCR currently recommends as a pre-condition for applying the STC concept.

The additional conditions recommended by UNHCR, and supported by some stakeholders, aim to increase the sustainability of the transfer and reduce incentives for returning to the EU. However,

¹⁹ See Thym D. (2024), op.cit.

the Commission services consider that the content of the notion of ‘effective protection’ laid down in Article 57 of the APR is aligned with the binding provisions of the 1951 Geneva Refugee Convention. In fact, some of the new safety conditions recommended by UNHCR in relation to the adoption of the APR, in particular (a) granting transferred persons the right to residence in the STC, and (b) ensuring the right to employment and housing on the same terms as nationals, go beyond what is required under the Geneva Convention for legally residing refugees.

Articles 59(1) and 57 of the APR do not explicitly state that the third country should agree to readmit the person, as per UNHCR’s 2018 recommendations. Nonetheless, Article 59(9) of the APR establishes that, if the third country does not (re)admit the person, the Member State must examine the person’s application on its merits. The CJEU, in case C-134/23²⁰ established that “the suspension of the admission or readmission of applicants for international protection to the territory of a third country designated as generally safe by a Member State has the consequence that that Member State must ensure that access to a procedure is given in accordance with the basic principles and guarantees described in Articles 6 to 30 of Directive 2013/32” (para 53 of the judgment).

In the light of these considerations, it appears that the safety criteria in the APR are aligned with the requirements of the Geneva Convention.

(b) Connection

While mandatory under the Asylum Procedures Directive and the APR, the connection criterion is not required by international law.

The Commission services recognise certain potential advantages to not applying the connection criterion: greater flexibility in managing asylum applications – particularly during times of disproportionate migratory pressure and crisis; reducing the administrative burden of proving connection or transit, and opening the possibility to establish new partnerships with more third countries for the application of the concept, which could ultimately expand the protection space globally.

The connection condition has not been addressed by the ECtHR’s jurisprudence. However, the CJEU has interpreted the connection criterion in two landmark cases. It is important to note that the Court was interpreting the APD, where the connection is required. In its 2020 ruling in Case C-564/18 *LH*²¹, the Court found that the conditions laid down in Articles 33(2) and 33(2)(b) of the Asylum Procedures Directive were not satisfied, as the condition of having a connection to a safe third country or to the first country of asylum was not met, and transit alone does not constitute a connection. In its judgment in Joined cases C-924/19 and C-925/19 *FMS and Others*²² of 2020,

²⁰ ECLI:EU:C:2024:838.

²¹ Case C-564/18 *LH v Bevándorlási és Menekültügyi Hivatal*, judgment of 19 March 2020, ECLI:EU:C:2020:218.

²² Joined cases C-924/19 and C-925/19, *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság*, judgment of 14 March 2020, ECLI:EU:C:2020:367.

the CJEU reiterated that an automatic rejection of an asylum application based on transit through a safe third country, as provided by Hungarian legislation, is contrary to existing EU law.

The non-binding nature of the connection criterion in international law leaves room for it to no longer be considered mandatory under the APR.

(c) Individual assessment

The right to an individual assessment of whether a third country is safe for each applicant, considering their specific personal circumstances, is explicitly guaranteed in EU asylum law – specifically, Article 38(2)(c) of the APD and Article 59(5)(a) of the APR.

This assessment must include an individual evaluation of the risk of *refoulement* by the STC to countries where the person may face a risk to life (including through death penalty) or be subjected to torture, inhuman or degrading treatment (including the risk of ‘chain’ *refoulement*). While Art. 59(7) APR creates a presumption that the conditions for designating a third country as ‘safe’ are fulfilled for third countries with which the EU concludes an agreement pursuant to Article 218 TFEU, the individual must be given the opportunity to rebut this presumption based on his/her specific circumstances.

As regards international law, the guarantee of an individual assessment is explicitly recommended in the Council of Europe Council of Ministers’ 2009 *Guidance on human rights in the context of accelerated procedures*²³. The 1951 Geneva Convention does not cover procedural aspects.

The jurisprudence of the European Court of Human Rights (‘ECtHR’) on the right to individual assessment is extensive. In the landmark *Ilias and Ahmed* 2019 ruling²⁴, the ECtHR stated that the applicant must be given the opportunity to demonstrate that the third country is not safe in his/her case (see also *M.K. and Others v. Poland* 2020²⁵, *D.A. and Others v Poland* 2021²⁶). Moreover, when a Contracting State seeks to remove an asylum-seeker to a third country without examining the asylum request on the merits, it is the duty of the removing State to thoroughly assess whether there is a real risk that the asylum-seeker will be denied access to an adequate asylum procedure in the receiving third country, which would protect him or her against *refoulement* (*Ilias and Ahmed v Hungary* 2019,²⁷ *Sherov and Others v. Poland* 2024²⁸).

In addition, Article 4 of Protocol No 4 to the ECHR (prohibition of collective expulsions) is interpreted by the ECtHR as requiring state authorities to ensure that each of the aliens concerned has a genuine and effective possibility to challenge their expulsion (*Hirsi Jamaa and Others*

²³ <https://www.refworld.org/policy/legalguidance/coeministers/2009/en/69315>

²⁴ Case of *Ilias and Ahmed v. Hungary* (Application no. 47287/15), judgment of 21 November 2019.

²⁵ Case of *M.K. and Others v. Poland* (Applications nos. 40503/17, 42902/17 and 43643/17), judgment of 14 December 2020.

²⁶ Case of *D.A. and Others v. Poland* (Application no. 51246/17), judgment of 8 July 2021.

²⁷ Cited above.

²⁸ Case of *Sherov and Others v. Poland* (Applications nos. 54029/17 and 3 others), judgment of 4 April 2024.

2012,²⁹ para. 177; *Sharifi and Others*,³⁰ para.210; *Khlaifia and Others*,³¹ paras. 238 and 248, *ND and NT v Spain*,³² para. 198).

While under the Geneva Convention the principle of *refoulement* allows for exceptions (on public security or public order grounds), in human rights law (including the European Convention on Human Rights) the principle of *non-refoulement* is absolute, i.e., it allows for no exceptions. In relation to the Charter of Fundamental Rights of the EU, the CJEU has explicitly ruled that “Article 4 and Article 19(2) [...] prohibit in absolute terms torture and inhuman or degrading punishment or treatment irrespective of the conduct of the person concerned”³³.

While Article 59(7) of the APR allows Member States to establish a *rebuttable* presumption of ‘safety’ for certain third countries “[w]here the Union and a third country have jointly come to an agreement pursuant to Article 218 TFEU that migrants admitted under that agreement will be protected in accordance with the relevant international standards and in full respect of the principle of non-refoulement”, it nevertheless remains necessary to conduct an individual assessment of the risk of *refoulement* for the person(s) in question. Applicants also have the right to an effective remedy against an inadmissibility decision based on the STC concept. A rebuttable presumption of ‘no risk of *refoulement*’ (whether direct or, especially, ‘chain’ *refoulement*) is difficult to justify, as it would shift the burden of proof to rebut the presumption to the applicant. This would be problematic both in the context of an appeal against the inadmissibility procedure itself and of an appeal against the return decision taken following the inadmissibility decision, insofar as the inadmissibility decision taken on the basis of the STC concept did not consider the merits of the application (i.e., the protection needs of the applicant), and therefore this is a situation that requires stronger due process guarantees given the nature of the human rights at stake³⁴.

It is important to recall in this context that Member States must conduct an individualised assessment even when carrying out Dublin transfers within the EU itself, where there is a presumption that all Member States are safe. Applicants also have the right to an effective remedy

²⁹ Case of *Hirsi Jamaa and Others v. Italy* (GC) 27765/09, judgment of 23 February 2012.

³⁰ Case of *Sharifi and Others v. Greece* (Application 16643/09), judgment of 21 October 2014.

³¹ Case of *Khlaifia and Others v. Italy* (Application (Application no. 16483/12), judgment of 15 December 2016.

³² Case of *N.T. and N.D. v. Spain* (Applications nos. 8675/15 and 8697/15), judgment of 13 February 2020.

³³ Joined Cases C-391/16, C-77/17 and C-78/17, ECLI:EU:C:2019:403, para. 94.

³⁴ On burden of proof, see *Ilias and Ahmed v Hungary* 2019, cited above, at para. 141:

“In particular, while it is for the persons seeking asylum to rely on and to substantiate their individual circumstances that the national authorities cannot be aware of, those authorities must 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. The 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 (*Sharifi*, cited above, §§ 31 and 32). General deficiencies well documented in authoritative reports, notably of UNHCR, Council of Europe and EU bodies are in principle considered to have been known (see, *M.S.S. v. Belgium and Greece*, cited above, paras 346-50, see also, *mutatis mutandis*, *F.G. v. Sweden*, cited above, paras 125-27). The expelling 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 (see *M.S.S. v. Belgium and Greece*, cited above, para. 359).

against the Dublin transfer decisions, including for *non-refoulement* risk (i.e., the risk of a violation of Article 4 of the Charter of Fundamental Rights of the EU, which prohibits inhuman and degrading treatment in the Member State to which the person is transferred).

It appears that there is no scope for reviewing the rules on the individual assessment that must be carried out when applying the STC concept as these are requirements under international law and jurisprudence.

(d) Effective remedy – including suspensive effect of the appeal

In terms of the scope of the remedy against a decision applying the STC to an asylum-seeker in the context of an inadmissibility examination, both the APD and APR establish that an effective remedy involves a full and *ex nunc* review of both points of fact and of law (Article 46(3) APD, respectively Article 67(3) APR). This aligns with ECtHR jurisprudence, which also requires a full and *ex nunc* review of both points of fact and of law in cases where a possible breach of Art. 3 ECHR is at stake (see e.g., *K.I. v. France* 2021³⁵).

It also aligns with Article 47 of the Charter of Fundamental Rights of the European Union, which guarantees the right to an effective remedy and to a fair trial. The Court of Justice of the European Union (CJEU) has developed a robust body of jurisprudence addressing the standards for effective judicial protection, including the need for remedies to have suspensive effect in cases of returns raising a risk of breaching the principle of *non-refoulement*. These rulings further reinforce the obligation for national courts to conduct thorough, timely, and effective reviews of decisions that may impact fundamental rights³⁶.

As previously noted, the Geneva Convention does not regulate aspects of procedure; the standards stemming from the ECHR and the CJEU are the only benchmarks for assessing effective remedies. Article 52(3) of the EU Charter of Fundamental Rights establishes that for rights also conferred by the European Convention on Human Rights, the scope of protection shall be the same as that resulting from the Convention, including the jurisprudence of the European Court of Human Rights (ECtHR). The Commission services have further examined the rules on the automatic suspensive effect of the appeals against inadmissibility decisions. The Commission services are of the view that the scope of the remedy, as outlined, cannot and should not be revised.

According to Article 68(1) of the APR, the effects of a return decision made in relation to an inadmissibility decision based on the STC concept shall be automatically suspended for as long as an applicant has a right to remain pending exercise of the right to an effective remedy. Article 68(3) lists exceptions to this automatic suspension (without prejudice to the principle of *non-refoulement*), including for various types of inadmissibility decisions; however, inadmissibility decisions based on the STC concept are not included. Where such exceptions apply, this means

³⁵ Case *K.I. and Others v. France* (application no. 5560/19), judgment of 15 April 2021.

³⁶ See cases: Case C-564/18, *L.H. v. Bevándorlási és Menekültügyi Hivatal*, ECLI:EU:C:2021:218, judgment of 25 March 2021; Case C-181/16, *Gnandi v. Belgium*, ECLI:EU:C:2018:465, judgment of 19 June 2018; Case C-562/13, *Abdida v. Belgium*, ECLI:EU:C:2014:2453, judgment of 18 December 2014.; Joined Cases C-924/19 PPU and C-925/19 PPU, *FMS and Others v. Országos Idegenrendészeti Főigazgatóság*, ECLI:EU:C:2020:367, judgment of 14 May 2020.

that, in practice, the suspension of the effects of the return is not automatic but may, of course, be requested from the court. The issue analysed in this context is whether there is scope for including inadmissibility decisions based on the STC concept among the exceptions to the automatic suspensive effect of the appeal.

The question of whether an appeal against the application of the STC concept has automatic suspensive effect is particularly important in cases of inadmissibility decisions based on the STC concept, where the application is not examined on its merits, and in view of the nature of fundamental rights at risk, and particularly the risk of *refoulement*. Nevertheless, rendering the suspensive effect of the appeal against the inadmissibility decision non-automatic could reduce procedural rigidity by allowing individuals to be removed from the EU territory while their appeal is pending. It could help reduce procedural delays in applying the STC concept and prevent potential abuses of appeal opportunities by the applicants, while still ensuring the protection of the applicant's fundamental rights, by allowing them to request the suspensive effect.

A distinction should be made between the suspensive effect of the appeal against the inadmissibility decision itself, and the suspensive effect of the appeal against the decision to return the applicant to the STC that is adopted as per the requirement in Article 37 APR in relation to the inadmissibility decision, , which ensures protection against *refoulement*. This should guarantee that the persons shall not be transferred where there is a risk of *refoulement* in the third country, or where there is a risk of serious harm, or inhuman or degrading treatment, in the third country. It is important to note, therefore, that applicants can still request the right to remain, and courts or tribunals could also address these matters *ex officio* under national law.

ECtHR case law requires that the suspensive effect must be automatic for the return decision if there is an Article 3 ECHR claim (see e.g., *MK and Others v Poland* 2020,³⁷ *Gebremedhin [Gaberamadhien] c. France* 2007,³⁸ *Hirsi Jamaa* 2012³⁹). There is, however, no similar explicit requirement when it comes to the suspensive effect of the appeal against the inadmissibility decision based on the STC concept.

There is scope for rendering the suspensive effect of the appeal against the inadmissibility decision based on the STC concept non-automatic, although an automatic suspensive effect must be maintained for the related return decision insofar as there is a claim of risk of *refoulement* under Art. 3 ECHR / Article 4 of the EU Charter.

4. Elements for review and position of stakeholders

As a result of the legal analysis in the previous section, there is scope to review the STC concept in relation to:

- (a) the connection criterion; and

³⁷ Cited above.

³⁸ *Gebremedhin [Gaberamadhien] v. France* (Application 25389/05), judgment of 26 April 2007.

³⁹ Cited above.

(b) the suspensive effect of the appeal against decisions rejecting an application as inadmissible on the STC ground.

The Commission services have identified and assessed **three alternatives for revising the connection criterion** in the context of the APR:

1) Removal of the connection criterion as a mandatory requirement under EU law

Since the connection criterion is not explicitly required under international law, one alternative considered was to remove it from EU law, thus allowing Member States, when applying the STC concept, the possibility to choose whether to apply the connection criterion and how to define it in their national law.

2) Considering transit as a sufficient criterion

A second alternative, which was part of the Commission's 2016 APR proposal, was to consider transit as a sufficient criterion to apply the STC concept to the individual.

3) Defining the connection criterion in the APR but making it more flexible (which would also include transit)

A third alternative would be to define 'connection' under EU law to consider cultural ties or knowledge of the language, in addition to transit, as sufficient links.

In relation to the suspensive effect of the appeals against the application of the STC concept, the Commission services has considered the possibility of **rendering the suspensive effect of the appeals against the inadmissibility decision non-automatic**.

The Commission consulted Member States, the European Parliament, UNHCR and civil society stakeholders on the above proposals and alternatives. The consultations took place from December 2024 to February 2025.

(a) Consultation with the Member States

The Commission consulted Member States on 27 January 2025 and 27 February 2025. A large group of the Member States that responded to the consultation supported deleting the requirement to apply the connection criterion, and removing the automatic suspensive effect of appeals against the inadmissibility decisions.

Among the possible advantages of not having to demonstrate the existence of a connection to the third country, Member States pointed to potential efficiency gains in the asylum procedure, arguing that eliminating the connection criterion would streamline application processing, reduce administrative burdens on national authorities (as there will be no burden to prove connection), and accelerate decision-making. In this sense, this group of Member States considered that the alternatives – i.e., considering transit as sufficient, or allowing for more flexibility in the definition of connection – would lead to new legal debates on the burden of proof and ultimately increase the administrative burden in the application of the concept.

Some Member States also mentioned that the deletion of the connection criterion would give them more flexibility to conclude agreements with third countries (when applying Article 59(7) APR) and would widen the pool of third countries that could become partners in the implementation of the STC concept, while one Member State signalled that a more flexible application of the STC concept would allow Member States to address situations of disproportionate migratory pressure and crises more effectively. They also see the facilitation of the application of the STC concept as a possibility to widen the protection space globally.

In terms of possible disadvantages and risks, some Member States mentioned that the lack of connection may hinder integration of the transferred applicants in the STC, notably if the receiving third country does not provide effective access to a procedure for requesting effective protection. Some also noted that, in the absence of a functioning partnership, third countries that are not connected to the applicant might be less prone to cooperate, and there are risks of more court challenges to the application of the STC concept, including due to poor living conditions in the STC. Furthermore, since not requiring the existence of a connection criterion would facilitate the application of the STC concept, it may increase the risk of secondary movements within the EU towards Member States where the STC concept is not applied or is applied with the connection requirement.

Some Member States also argued that rendering optional the application of the connection criterion would lead to further divergences in the way in which the concept is applied across the EU. This may also negatively affect the functioning of the Dublin system, to the extent that national courts may suspend Dublin transfers to Member States where the applicants face an application of the STC concept without requiring a connection, or where courts consider that the concept is applied ‘too leniently’ or in an incorrect way. The Member States opposed to lifting the mandatory nature of the connection criterion in EU law supported defining the connection criterion in a more flexible way, which could increase the pool of safe third countries.

As regards removing the automatic suspensive effect of appeals against the inadmissibility decision based on the STC concept, the majority of Member States supported the option of non-automatic suspensive effect, pointing out the following potential advantages:

- it may reduce procedural delays;
- it is more in line with the short duration of accelerated and border procedures;
- it may reduce the financial burden of offering reception conditions to the applicants pending the examinations of their protection claims;
- it may prevent the abuse of appeal opportunities by the applicants, and may help reduce the risk of absconding and secondary movements within the EU.

In terms of possible disadvantages, some Member States consider that this proposal could increase the workload of appeal courts and lead to less thorough judicial reviews.

A further consultation with Member States took place on 27 February 2025, during which the Commission informed them about the results of the consultations with the European Parliament, UNHCR and other stakeholders. This included an overview of the advantages and disadvantages identified for each alternative, as well as possible measures that could be foreseen to mitigate some

of the risks. While Member States reiterated their initial positions (a majority in favour of and some opposed to the deletion of the connection criterion), they indicated that mitigating measures could be considered reasonable to address some of the main disadvantages identified.

Against this background, some Member States raised in different fora the issue of an increased risk of absconding if the connection condition for the application of the STC concept were to be eliminated, and proposed solutions to address this risk. They supported the introduction of dedicated measures, or at least conducting an in-depth analysis by the Commission on how to best prevent absconding during the admissibility procedure for implementing the STC concept. The possible solutions supported so far by few Member States included possible amendments to Article 10(4) of the Reception Conditions Directive (RCD) (2024/1346), providing an additional ground for detention, or adding a rebuttable presumption of a risk of absconding. Moreover, one Member State proposed to include a recital in the APR, stipulating that an inadmissibility decision issued on the basis of the STC concept may be a ground for measures restricting the freedom of movement.

(b) Consultation with the European Parliament

During the discussion at the **Working Group on Asylum - Implementation of the Pact/Common European Asylum System** of the **European Parliament** on 19 February 2025, the views of the political groups were divided on the scope for revision.

Some political groups supported deleting the requirement to apply the connection criterion and removing the automatic suspensive effect of appeals, arguing that these changes would improve efficiency and curb secondary movements. Some groups called for additional measures to address the risks of absconding and secondary movements, advocating for a strong focus on security. Other groups opposed both proposals, stressing the importance of safeguarding the individual's right to asylum in the EU, and the need for alignment with UNHCR guidance to ensure long-term sustainability of the transfers. Some warned that the lack of a connection criterion could hinder integration in the receiving third country, increase secondary movements, and leave individuals transferred to the third country without meaningful ties or guarantees of effective protection.

There were also concerns that removing the requirement to apply the connection criterion could lead to increased litigation, judicial interventions and other administrative burdens. Concerns were raised over potential *refoulement* risks if the suspensive effect of the appeal were removed. It was also argued that the focus should remain on implementing the Pact, rather than introducing changes that could disrupt its carefully negotiated balance. While acknowledging the Commission's mandate to conduct a review of the STC concept, some observed that this does not necessarily require also revising the legislation.

Some parliamentary groups also acknowledged that any changes to the STC concept must be accompanied by strong cooperation agreements with third countries. However, there were also warnings against designating countries as 'safe' based exclusively on diplomatic agreements or political interests. Such agreements should not only focus on readmission and returns but also ensure improved conditions for individuals.

(c) Consultation with UNHCR

In exchanges related to the review of the STC concept, UNHCR, while acknowledging that the connection criterion is not mandatory under international law, reiterated that it views the STC concept as an optional tool and expressed strong concerns about the deletion of the connection criterion. It warned of risks relating to long-term sustainability of the transfers leading to possible movements back towards the EU. UNHCR noted that the current APR falls short of ensuring an access to an examination of the merits of the applications of those persons transferred to a third country. UNHCR considered that, in the absence of such a guarantee, persons transferred based on the STC concept risk remaining in a situation of uncertainty due to the risk of subsequent rejections without proper assessment of protection claims, resulting from a chain application of the STC concept. It also cautioned about possible negative effects on third countries' willingness to develop protection systems.

UNHCR also stressed that, if the connection criterion were removed, additional safeguards would be essential to ensure the protection of individuals. It suggested that these safeguards might include: guarantees of access to a full examination of the merits through a fair and efficient asylum procedure in the third country; effective *non-refoulement* safeguards; guarantees on the right to effective appeal; guarantees of adequate age-sensitive and gender-sensitive reception conditions in the third country; and a pre-transfer individual assessment, particularly for vulnerable groups, for whom the connection criterion should be retained.

On the automatic suspensive effect of appeals, UNHCR raised concerns that its removal could increase detention risks for individuals with pending appeals. It also recalled that, under the case-law of the European Court of Human Rights, an appeal based on an arguable claim of Article 3 ECHR violation must have automatic suspensive effect to be considered effective. UNHCR also proposed the creation of an independent EU advisory body to assess STC designations, enhancing monitoring and impartiality.

For UNHCR, the mere possibility of requesting suspensive effect is insufficient to ensure the applicant's right to an effective remedy, especially in light of the irreversible nature of the harm that might occur. UNHCR considers that, if the appeal of the return decision has suspensive effect, but the appeal of the inadmissibility decision does not, this could allow for the potential return of someone who makes a legal error by appealing the substantive decision but not the return decision. This could then lead to the transfer of someone who is at risk.

UNHCR also highlighted that, even where a removal measure is automatically suspended, this does not necessarily ensure an effective remedy against the asylum rejection in all cases. This could particularly be true when the authorities responsible for hearing the asylum and removal order appeals are different, resulting in the absence of a joint appeal. In such cases, situations may arise where the return appeal is rejected – thus ending the suspensive effect – and the applicant is removed, while the STC appeal is still pending. Since the scope of those two appeals differs – one concerns whether all the criteria set out in Article 59 of the APR are fulfilled, and the other concerns obstacles to removal, such as *non-refoulement* (i.e., a lower standard) – there can be a significant practical difference. In UNHCR's view, the fact that (potentially different) return

authorities decide whether removal can proceed is not an adequate substitute for the lack of automatic suspensive effect of appeals against STC rejections.

UNHCR also raised concerns that are not linked to the proposed revisions but more generally to other aspects of the application of the STC concept. It reiterated its reservations regarding the use of only diplomatic assurances from STCs, as opposed to having bilateral agreements with the STC regarding the treatment of the transferred persons, emphasising that both the content and the possibility to implement the arrangements/agreements matter. It advocated for clear legal obligations (formal agreements between States on the transfers of asylum seekers), monitoring mechanisms, and enforceable commitments from the STC that can be challenged in a court of law.

Additionally, UNHCR called for ensuring family reunion with family members within the EU before considering STC transfers. It also stressed the importance of carefully assessing safety guarantees for individuals in a third country considered 'safe' in general, to avoid relying exclusively on diplomatic assurances from the third country.

(d) Consultation with the civil society organisations

At the meeting with Commission services held on 19 February 2025, all participating civil society organisations ('CSOs') expressed their opposition to the deletion or amendment of the connection criterion, as well as to the lifting of the automatic nature of the suspensive effect of appeals.

CSOs also observed that the purpose of the STC concept is to promote burden sharing, and not burden shifting, with third countries. CSOs also flagged concerns regarding the feasibility of concluding agreements/arrangements with third countries that satisfy the conditions for being considered safe, and the 'chilling effect' that a massive application of the STC concept might have for the third countries, including in terms of reducing incentives to develop their own protection systems (because not satisfying the condition of having effective protection systems would avoid them being approached for the application of the STC concept).

CSOs highlighted the central importance of the connection criterion to act as an additional safeguard to mitigate negative impacts on applicants where due process may not be guaranteed in a STC. They noted that the less connection an applicant has to a country, the less likely it is that admission to that country and access to effective protection will be possible. CSOs pointed out that the removal of the connection criterion would have a negative impact in terms of legal certainty and predictability, which in turn may also lead to an increase in secondary migration, absconding, or the possibility of arbitrary detention of applicants in third countries.

CSOs questioned the need to amend the concept prior to the implementation of the Pact, which already introduced new provisions in relation to the STC concept.

CSOs also highlighted various safeguards that would be required if the connection criterion were to be amended or deleted. Some CSOs shared their concerns in relation to how the removal of the connection criterion would impact vulnerable applicants, and indicated that as a minimum, connection should remain a mandatory criterion for vulnerable applicants.

On a more general level, and not directly linked to the revision proposals, CSOs remain sceptical to the application of the STC concept both in principle and in practice, and reiterated their view that the protections under the APR already fall short of those required under the Geneva Convention. They also voiced concerns regarding the funding costs involved in such agreements, particularly in relation to the potential diversion of funding intended for the implementation of the Pact to STC schemes.

CSOs also mentioned the need to follow UNHCR guidelines that require an agreement between the Member State and the third country concerned – agreement that is legally binding, and grants rights and obligations to applicants that can be defended in a court of law, as well as effective access to asylum determination procedures (i.e., examination of the merits) in practice in the third country concerned, and not solely based on diplomatic assurances. This is key particularly considering the discrepancy between protections provided in law and in practice. The need to use a strong independent monitoring system, which may include civil society, was also emphasised. This would need to be linked to accountability measures, whereby some recourse would be available if monitoring reveals that access to effective protection is not possible in practice. The need for Member States to rely on the European Union Agency for Asylum (EUAA) country-of-origin information, which is updated on a regular basis, was also stressed.

5. Assessment of the alternatives for review and conclusions

As explained in section 3, the Commission services examined the scope for simplifying the requirements under international law, in particular the 1951 Geneva Refugee Convention, the 1950 European Convention on Human Rights, and the EU Charter of Fundamental Rights. The conclusion is that there is no scope for reviewing the safety conditions for designating a third country as safe, as these are aligned with international law. There is also no scope for simplifying the requirement for conducting an individual assessment or the rules on remedies, as these are required under EU and international law and jurisprudence. There is, however, scope for revising the mandatory nature of the connection criterion, insofar as not required by international law, and for lifting the automatic nature of the suspensive effect of appeals against inadmissibility decisions. The appeal against the related return decision will continue to have automatic suspensive effect insofar as the risk of *refoulement* is at stake.

Based on a careful and thorough analysis of the alternatives identified for revising the STC concept, the advantages and disadvantages of each alternative, and the risks identified by various stakeholders, **a combination of measures** is most likely to achieve the desired flexibility and facilitate the application of the STC concept by Member States, while maintaining essential safeguards, preserving fundamental rights and addressing the main risks identified by stakeholders.

Proposal for the revision of the connection criterion for the application of the STC concept in the APR

When applying the STC concept, Member States will have three alternative options:

- 1) To apply the STC concept where there is a connection, as defined in national law, in line with CJEU case law and international standards; *or*

- 2) To apply the STC concept considering transit as a sufficient link; *or*
- 3) To apply the STC concept without the need to demonstrate the existence of a connection or transit, on the basis of an agreement or arrangement with a third country requiring the examination on the merits of the requests for effective protection made by applicants subject to that agreement or arrangement. This option would not apply to unaccompanied minors.

The proposal introduces a transparency clause requiring Member States to inform the Commission and other Member States prior to concluding agreements or arrangements with safe third countries.

The suspensive effect of appeals against inadmissibility decisions based on the STC concept can be made non-automatic (i.e., the suspensive effect may nevertheless be requested in court). However, appeals against the return decision taken as per Article 37 APR, in relation to the inadmissibility decisions issued in application of the STC concept, will continue to have an automatic suspensive effect when risks of inhuman or degrading treatment are invoked under Article 4 EU Charter.

(a) Revision of the connection criterion

The Commission services took note of the fact that a majority of Member States are in favour of eliminating the requirement of the connection criterion in EU law for the reasons explained in section 4, but also of some Member States remaining opposed to the deletion of connection and of concerns raised by various stakeholders' groups.

The Commission services examined the arguments in favour and against the option to consider that connection should no longer be a mandatory requirement under EU law, and decided to retain connection as an optional criterion. However, Member States should be able to apply the STC concept even when a connection cannot be established, for example when the person has transited through a safe third country, or when no other links can be established at all. Yet, in such cases it becomes important to introduce measures that address some of the concerns raised.

The Commission proposes that, in the absence of connection or transit, the STC concept should only be applied on the basis of an agreement or arrangement with the third country, meaning that applicants would be able to have access to a procedure in safe third countries and receive effective protection if justified, without prejudice to the third country deciding whether the person satisfies the conditions for obtaining such protection.

The existence of a connection or of previous transit, which provides an objective link to the safe third country and was included in the 2016 Commission proposal for an Asylum Procedure Regulation⁴⁰, will be mandatory when the STC is applied to unaccompanied minors. This requirement reduces their exposure to inadequate protection and social isolation. Unaccompanied minors are in a situation of vulnerability and need additional support when the STC concept is

⁴⁰ Proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, COM/2016/0467 final - 2016/0224 (COD).

applied to them. This is acknowledged by the provisions of Article 59(6) of the APR, requiring that a third country may only be considered to be safe for an unaccompanied minor where it is not contrary to the best interests of the child and where there are assurances that the third countries' authorities will take charge of the unaccompanied minor and provide immediate access to effective protection.

The Pact on Migration and Asylum establishes a more integrated common European system, in which decisions taken by one Member State impact on other Member States. The asylum and migration system of the Pact is based on trust and includes various instruments to ensure transparency (e.g., monitoring of screening and border procedure, EUAA monitoring mechanism) that should also apply to the STC concept. For this reason, the proposal introduces a transparency clause requiring Member States to inform the Commission and other Member States prior to concluding agreements or arrangements with safe third countries. This would also help Member States and the Commission to better coordinate their efforts towards third countries for the conclusion of agreements or arrangements and support the comprehensive approach in the external dimension of migration. The Commission would also be able to monitor that agreements or arrangements with third countries meets the conditions set by the APR.

Finally, concerning risks associated with potential absconding within the EU in relation to the application of the STC concept, the Commission services consider that such concerns can be adequately addressed by using the possibilities of restricting freedom of movement pursuant to Article 9 of Directive (EU) 2024/1346, or by detaining the applicant concerned in accordance with Article 10 thereof, pending the assessment of the admissibility of the application. In this regard, it is possible to consider there is a risk of absconding when applying the concept, provided the definition of absconding in national law includes such circumstance.

The Commission services examined the arguments in favour and against the option to consider also transit, and on balance decided to retain it, to further facilitate the application of the STC concept. Considering transit as sufficient criterion, in theory, facilitates the practical application of the STC concept, while maintaining safeguards for applicants. As some stakeholders noted, considering that transit is a sufficient link could increase the list of potential STCs. It could also provide more legal certainty in terms of interpretation of the concept by the courts. Transit, as an objective link to the safe third country, maintains the underlying rationale of the connection criterion - namely that it would be reasonable for the applicant to go to a country where she or he could have applied for protection.

To address potential operational challenges, particularly the eventual burden of proving transit, a solution that was considered is the possibility to introduce and use a presumption of transit. For instance, it could be presumed that an individual arriving irregularly in the EU territory who is unable to demonstrate a direct route of arrival, must have transited through at least one third country – unless they are a national of a neighbouring country. However, the presumption being rebuttable, the likelihood is that it would be litigated frequently, and this factors against the desired simplification of the application of the STC concept. For this reason, the possibility of introducing this presumption was discarded.

The Commission services examined the arguments in favour and against the option to expand the definition of connection in EU law, and on balance decided to discard it.

Some stakeholders had noted that this alternative could increase the list of potential STCs, as it goes beyond third countries traditionally on the migratory routes to the EU, while facilitating cooperation with the third country concerned. Others had noted that it could provide more legal certainty in terms of interpretation of the concept by the courts, while maintaining the rationale for the connection criterion. In turn, this could lead to a higher number of positive court decisions confirming the application of the STC concept and eventually to less litigation. Some mentioned that it would facilitate the integration of the applicant once transferred, and thereby the sustainability of the transfer.

However, several stakeholders noted that the same risks associated with the burden of proof relying on the authorities that were identified in relation to the transit alternative would persist in this case, because the applicants will not be likely to disclose voluntarily information about the existence of such links. The alternative is therefore not considered as bringing about the desired effect of simplifying the application of the STC concept. Furthermore, it would no longer be necessary, as the connection criterion is retained as optional, and the use of transit is also possible.

(b) Suspensive effect of the appeal against the inadmissibility decision

The Commission services have also concluded that, in order to enhance procedural efficiency in the application of the STC concept, the suspensive effect of appeals against inadmissibility decisions should not be automatic, except for related return decisions where there is a potential violation of Article 4 of Protocol 4 to the EU Charter (i.e., Article 3 of the European Convention of Human Rights).

In terms of the risks associated with this proposal, the Commission services acknowledged that the question of whether an appeal has suspensive effect on the removal of the applicant to a third country is particularly important in cases of inadmissibility decisions based on the STC concept, where the application is not examined on its merits. The nature of the human rights at risk, and particularly the risk of *refoulement*, makes the guarantee of the suspensive effect of appeal in the APR crucial. These risks were flagged during the consultation by some Member States, UNHCR, and civil society.

It is, however, noted that the suspensive effect of the appeal remains mandatory for the return decision taken in relation to the inadmissibility decision, as per Article 37 APR, and as confirmed in the Commission's recent proposal for a Return Regulation⁴¹, when *refoulement* risks are invoked. This should ensure that individuals are not transferred if there is a risk of *refoulement* in the third country, or if there is a risk of serious harm, or inhuman or degrading treatment in the third country.

⁴¹ Proposal for a Regulation of the European Parliament and of the Council establishing a common system for the return of third-country nationals staying illegally in the Union, and repealing Directive 2008/115/EC of the European Parliament and the Council, Council Directive 2001/40/EC and Council Decision 2004/191/EC, COM/2025/101 final.

On the other hand, several Member States and stakeholders highlighted the potential benefits of removing the automatic suspensive effect of appeals. They noted that this measure could help reduce procedural delays in applying the STC concept, ensuring greater efficiency, while remaining consistent with the short duration of accelerated and border procedures. Additionally, some stakeholders consider that it could help prevent the potential abuse of appeal opportunities by the applicants, and help reduce the risks of absconding and secondary movements related to the application of the STC concept.

Annex

EU Member State	STC concept applied?	Application Method
Austria	✓	Case-by-case
Belgium	✓	Case-by-case
Bulgaria	✓📄	<u>List</u> : Bangladesh, Iran, Türkiye
Cyprus	✓	Case-by-case
Czech Republic	✗	Included in national legislation but not applied in practice
Denmark	✓	Case-by-case
Estonia	✓📄	<u>List</u> : Albania, Armenia (except Nagorno-Karabakh), Bosnia and Herzegovina (except Republika Srpska), Georgia (except Abkhazia and South Ossetia), Kosovo, Montenegro, North Macedonia, Serbia
Finland	✓	Case-by-case
France	✗	Not included in national legislation, STC concept not allowed by Constitution
Germany	✓📄	<u>List</u> : EU Member States, Norway, Switzerland
Greece	✓📄	<u>List</u> : Albania, North Macedonia, Türkiye (for applicants originating from Syria, Afghanistan, Pakistan, Bangladesh and Somalia) ** ** NB: The Greek Council of State on 21/03/2025 annulled the joint ministerial decisions characterising Türkiye as a STC for the above listed applicants.
Croatia	✓	Case-by-case
Hungary	✓📄	<u>List</u> : Albania, Australia, Bosnia and Herzegovina, Canada, EU countries, Iceland, Kosovo, Liechtenstein, Montenegro, New Zealand, North Macedonia, Norway, Serbia, Switzerland, Türkiye, USA (states that do not apply the death penalty)
Ireland	✓	Case-by-case and <u>list</u> : UK and Northern Ireland
Italy	✗	Not included in national legislation
Latvia	✓	Case-by-case
Lithuania	✓	Case-by-case
Luxembourg	✓	Case-by-case
Malta	✓	Case-by-case
Netherlands	✓	Case-by-case
Poland	✗	Not included in national legislation
Portugal	✗	Included in national legislation but not applied in practice
Romania	✗	Included in national legislation but not applied in practice

Slovakia	✗	Included in national legislation but not applied in practice
Slovenia	✗	Included in national legislation but not applied in practice
Spain	✗	Included in national legislation but not applied in practice
Sweden	✓	Case-by-case

Source: compiled by the Commission services based on information available in the EUAA: [Who is Who - Who is Who in International Protection in the EU+: Countries Applying the Concept of Safe Countries in the Asylum Procedure](#)