

EDITORIAL

The European Commission's Proposed Revision of the Safe Third Country Concept: Changing Approaches in a Changing Environment¹

Dr. Réka Friedery²

The European Commission presented a series of legislative amendments aimed at facilitating the implementation of the "Safe Third Country" mechanism by Member States within the European Union in the context of assessing asylum claims.³ These revisions were accompanied by a reaffirmation of the continued importance of safeguarding fundamental rights and ensuring compliance with international legal obligations.

The revisions can be seen as part of a long process. The New Pact on Migration and Asylum (Migration and Home Affairs, 2024) strengthens provisions for return and readmission and further clarifies how safe third country designations can be used. Beside this, the safe third country concept is of pivotal importance in the context of recent agreements or partnerships concerning migration between the European Union and third countries, such as Tunisia (European Commission, 2023), Egypt (Directorate-General for Neighbourhood and Enlargement Negotiations, 2024) and Mauritania (European Commission, 2024), that frequently entail an implicit reliance on the safe third country principles, albeit without explicit reference to such principles.

The safe third country concept is a legal mechanism within EU asylum law that allows Member States to declare an asylum application inadmissible if the applicant has already found – or could have found – protection in a non-EU country deemed "safe." Hence, individuals fleeing persecution should seek protection in the first safe country they reach, rather than choosing their final destination. Regarding primary law, Article 78(2) point (d) of the Treaty on the Functioning of the European Union (TFEU) stipulates that the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status. Regarding secondary law, the safe third country concept is outlined in the Asylum Procedures Directive (Directive 2013/32/EU),⁴ which stipulates the criteria under which asylum claims may be declared inadmissible. The designation of a third country as "safe"

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² Dr. Réka Friedery, LL.M., is a research fellow in the ELTE Centre for Social Sciences, Hungarian Academy of Sciences Centre of Excellence, Budapest, Hungary, and co-editor of the QRP.

³ 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 [SWD (2025) 600 final]. <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52025PC0259>.

⁴ 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.

is dependent upon the satisfaction of specific conditions, including compliance with the 1951 Geneva Convention relating to the Status of Refugees. But there are other conditions to consider too. Firstly, the principle of '*non-refoulement*', which prohibits the return of individuals to a country where they would face a risk of serious harm. Secondly, the requirement for a meaningful connection between the applicant and the third country in question, such as previous residence or transit. Thirdly, the need for the availability of fair and efficient procedures for determining protection needs.

It should be noted that the EU legal framework distinguishes between national designations of safe third countries and ongoing efforts to formulate a common EU-wide list. However, the establishment of the latter has been hindered by political disagreements among Member States.

The European Commission's recent proposal introduces several significant changes to the existing regime.

- Firstly, it is important to note that the proposed changes include the elimination of the "connection" requirement. Previously, an asylum seeker was required to demonstrate a meaningful tie to a third country, such as prior residence or family links, in order for a safe third country designation to be valid. The latest revision to the regulations eliminates this requirement.
- Secondly, the permission of transit, or the establishment of formal agreements, is regarded as sufficient grounds. At present, the mere transit of a "safe" third country, or the existence of a formal agreement between the EU state and that third country, is sufficient to consider an asylum claim inadmissible. However, unaccompanied minors are exempt from this exception.
- Thirdly, the removal of suspensive appeal mechanisms where it is important to note, as appeals against such inadmissibility decisions would no longer result in the automatic suspension of enforcement. Consequently, individuals may be removed prior to the hearing of an appeal.
- Furthermore, it is recommended that transparency be increased, with Member States obliged to notify the Commission and their fellow Member States prior to concluding safe third country arrangements, thereby enabling oversight of these agreements.

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