

COLLEGE D'EUROPE
DEPARTMENT D'ETUDES POLITIQUES ET DE GOUVERNANCE EUROPEENNES

IEE-ULB – Institute for European Studies

Débat sur l'avenir
MIGRATION AND HUMAN
RIGHTS:
Rethinking the Concept of Safe Third
Countries

Policy recommendations presented by

Charline dos Reis Barreira

Hugo Le Ménéz-Rego

Blanca Torrego

Luca Rifelj

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As it currently stands, the concept of a safe third country raises essential considerations, particularly regarding Human Rights protection and the well-being of migrants. The STC framework is currently under discussion within the EU institutions, and in this context, it is expected to be subject to changes. Hence, we encourage negotiators to advocate for stronger provisions that uphold human rights.

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1 Introduction

1.1 *Who are we ? What is the Débat sur l'Avenir ?*

The Debate on the Future of Europe is an annual initiative jointly organized by the Institute for European Studies (IEE) at ULB and the Department of European Political and Governance Studies (POL) at the College of Europe. Every year, it brings students from both institutions together to discuss key European issues.

This year, Luca, Hugo (ULB), Blanca, and Charline (CoE) are working on the **"Safe Third Countries" policy**. Our panel examines the increasing use of third countries to process asylum applications, raising human rights concerns and questioning its compatibility with international protection standards.

1.2 *What is a Safe Third Country ?*

The **Safe Third Country (STC)** mechanism in **EU asylum law** allows an EU Member State to **declare an asylum application inadmissible** if the applicant could have sought protection in another country deemed “safe”. Codified in the **Asylum Procedures Directive** and expanded in the **2024 Asylum Procedures Regulation**, a safe third country must: (1) respect non-refoulement, (2) provide access to a fair and effective asylum procedure, and (3) offer protection in line with the **1951 Refugee Convention**. Additionally, there must be a **meaningful connection** between the applicant and that country, though the extent of this requirement remains contested.

The STC mechanism seeks to **prevent “asylum shopping”** by requiring applicants to seek protection in the first safe country they reach. However, its implementation raises serious **human rights concerns**. If a country lacks a robust asylum system or is wrongly presumed safe, asylum seekers may face indirect **chain refoulement**, ultimately being deported to their country of origin without a fair asylum process. Transferring asylum responsibilities to third states with weaker protection capacities often leads to systemic rights violations, prompting extensive litigation before national and European courts over the **legality and safety** of such transfers.

2 First Recommendation: Ensuring Protection in Safe Third Country Assessments

2.1 Legal Base

- Asylum Procedure regulation amended
- Charter of Fundamental Rights & ECHR – Protects asylum seekers' rights

2.2 Context

Given the risks posed by the current STC system for displaced persons, it is crucial to preserve and further strengthen the current framework, including the connection criteria, while implementing effective monitoring to ensure their protection. The lack of uniform criteria and oversight has led to inconsistent application by Member States, increasing the risk of refoulement and inadequate safeguards.

The European Union Agency for Asylum (EUAA) must play a key role in ensuring regular monitoring and transparent assessments to verify that designated STCs meet protection standards. A stronger framework will help prevent arbitrary transfers and uphold asylum seekers' fundamental rights across all Member States.

2.3 Amendments to Articles 59 (new elements) – Notion of Safe Third Country

2.3.1 A Third Country may be designated as a safe if :

- (b) It guarantees full respect for non-refoulment, including indirect refoulment**, in line with Article 33 of the Geneva Convention and Article 3 of the ECHR;
- (c) The applicant has access to a fair, effective, and independent asylum procedure**, including the right to an appeal with suspensive effect;
- (f) Any detention of an asylum seeker is based on a strict legal framework**, with judicial oversight and specific time limits. In the case of minors, detention can only occur together with their family.

2.3.2 Enhanced protection for vulnerable groups

- (a) Unaccompanied minors shall only be transferred if legal safeguards ensure their well-being** and a durable solution;
- (b) A country shall not be deemed safe for LGBTQ+ individuals, ethnic or religious minorities, or other vulnerable groups if there is systemic discrimination, criminalization, or persecution;**

(c) Victims of trafficking and gender-based violence must receive specialized care and protection before any transfer. Detention in a safe third country must ensure adequate and personalised support, appropriate facilities, and full respect for the individuals' rights and dignity.

2.3.3 Review in case of human rights violations

(c) If credible **reports by the monitoring project of the EUAA indicate serious human rights violations, the third country's designation shall be immediately reviewed**, and the Commission shall issue a recommendation to the member state who designated the safe third country.

(d) In cases where a member state **systematically transfers asylum seekers to a third country that has not been officially designated** as a safe third country, the **same conditions and safeguards shall apply**. This includes a review mechanism in the event of credible reports of human rights violations, ensuring compliance with international protection standards.

2.4 *New Article 60B – Safe Third Country Designation by Member States*

2.4.1 Designation of Safe Third Countries at the Member States level

(a) A third country may be designated as a **safe third country** by a Member State in **accordance with the conditions laid down in Article 59, as amended**.

(b) A Member State seeking to designate a third country as a safe third country shall **submit an official request to the European Commission**. Upon receipt of such a request, the Commission shall **mandate the EUAA to investigate the third country's compliance** with the criteria set out in **Article 59, as amended**.

(c) **The EUAA shall issue a reasoned recommendation within three months** of the official request, assessing whether the third country meets the criteria outlined in **Article 59, as amended**.

(d) This recommendation shall be **transmitted to the Commission for approval** and subsequently communicated to the requesting Member State. The recommendation shall remain confidential and shall not be published.

2.4.2 Post-Designation Monitoring

(a) **Within one year of the official designation of a safe third country, the EUAA shall conduct a further assessment** and issue a recommendation confirming whether the designated third country continues to meet the **requirements set out in Article 59, as amended.**

(b) **A systematic reassessment shall be conducted every two years** to ensure the continued compliance of the designated third country with the requirements of Article 59, as amended. **This reassessment shall be carried out by the EUAA,** and the resulting recommendation shall be **transmitted to the Commission,** which shall then communicate it to the Member State concerned. **The recommendation shall remain confidential and shall not be published.**

2.4.3 Failure to comply with Recommendations

(a) Where a **Member State systematically fails to act upon the recommendations issued by the EUAA** and transmitted by the Commission, **leading to persistent non-compliance with the criteria set out in Article 59, as amended, and Article 60B,** the Commission shall have the **right to make public all rejected recommendations.**

(b) In such cases, the **Commission may also publish the name of the Member State** that has failed to comply with the recommendations and the provisions of **Articles 59, as amended, and 60B, in order to ensure transparency and accountability** in the application of the safe third country designation process.

2.4.4 Application of requirements to non-designated third countries

(a) Where a **Member State systematically transfers asylum seekers to a third country that has not been formally designated as a safe third country,** the requirements and safeguards set out in this Article and Article 59, as amended, shall apply to such transfers.

(b) In such cases, the **EUAA shall assess the compliance of the third country with the relevant requirements,** and its findings shall be subject to the same review and reporting mechanisms as those applicable to formally designated safe third countries.

2.5 Implementation

The Commission shall forward a proposal that will need European Parliament and Council approval; this two steps will lead to immediate enforcement.

3 Recommendation II : EUAA monitoring process

3.1 *Legal Base*

- Asylum Procedure Regulation 2024/13/48 amended by Recommendation 1: Article 59 and 60b
- Regulation 2021/2303 articles 14 & 15

3.2 *Monitoring Instrument*

3.2.1 Extending the Scope of the EUAA's monitoring mechanism

To enhance oversight and ensure consistency in the application of the STC designation, the EUAA should extend its existing **Monitoring Mechanism** to include the assessment of a Member State's designation of an STC. This expansion should include a **biennial review** of compliance with Article 59 (as amended) to ensure adherence to the required standards.

The EUAA should conduct **systematic evaluations** of STCs designated at the national level by a Member State, as notified to the European Commission under **Article 64(4)** of the Asylum Procedures Regulation (APR). These evaluations should assess the safety of designated third countries based on the criteria outlined in Article 59 (as amended) Article 59 (as amended) and their demonstrated commitment to receiving and providing protection to individuals within the STC framework, thereby preventing **chain refoulement**.

3.2.2 Regular Assessment and Monitoring of Safe Thirs Countries' compliance with article 59 (amended)

Maintain accountability and uphold asylum standards, the EUAA should implement a structured and **systematic assessment process**. This should begin with an initial evaluation, ensuring that a **mandatory assessment and report** by the EUAA are delivered within **three months** of an official request by a Member State for an STC designation submitted to the Commission under **Article 60(B)** (as amended) of the APR. A comprehensive review should follow, assessing the designated STC's compliance with Article 59 (as amended), with a report submitted to the Commission **within one year** of the country's designation. A systematic reassessment should be conducted **every two years** to ensure ongoing adherence to the requirements of Article 59 (as amended). The EUAA must also maintain continuous monitoring of the human rights situation in designated STCs to identify and address any serious violations. If the EUAA reports serious human rights violations, the Commission **must issue a recommendation** outlining such violations to the Member State urging it to review its designation of the STC as provided for in **Article 59(3)(c)** amended

of the APR. Additionally, if the agency documents the systematic transfer of asylum seekers to a third country that is not formally designated as an STC, it must conduct an evaluation under Article 59(4)(b). If the country meets the criteria, the Commission should **recommend** that the relevant Member State submit an official request under Article 60(B).

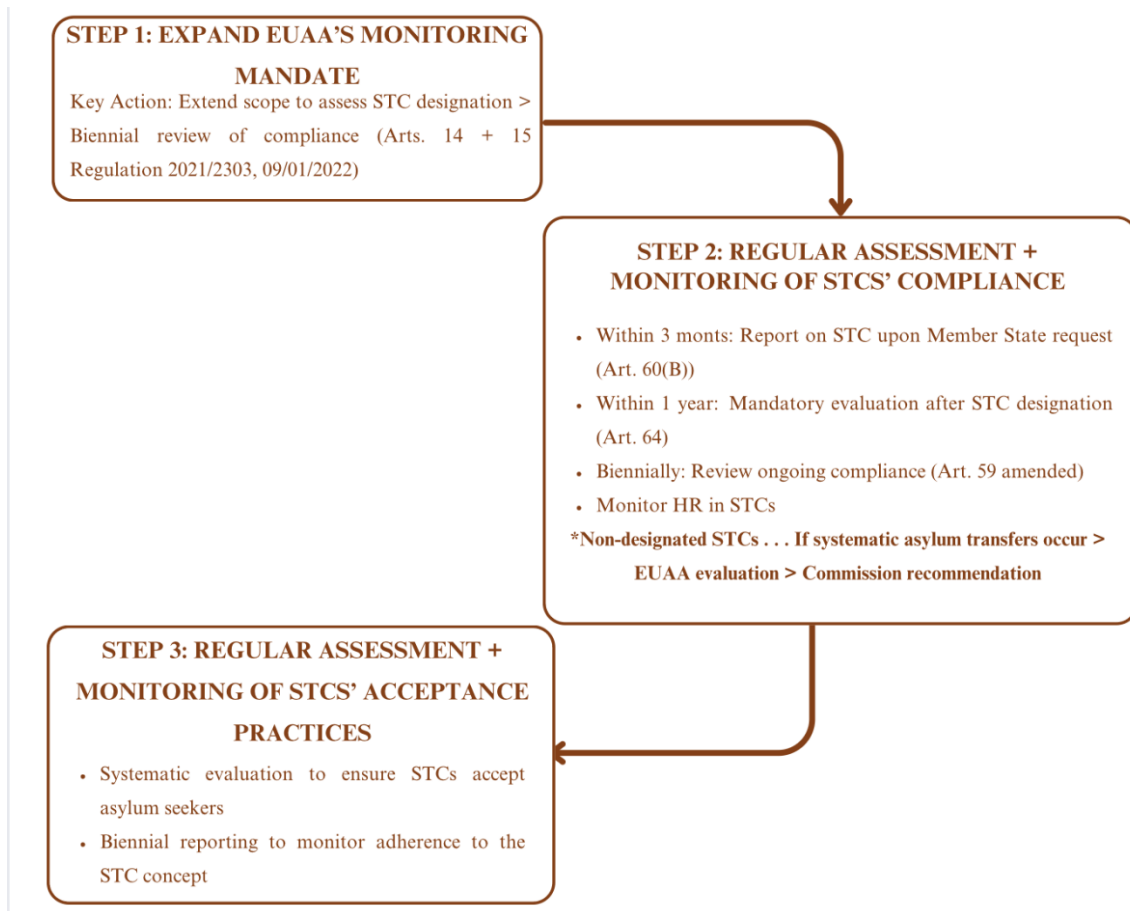
3.3 Regular Assessment and Monitoring of Safe Third Countries' Acceptance Practices

In addition to evaluating compliance with safety criteria, the EUAA should ensure that designated STCs effectively fulfill their role by accepting asylum seekers in accordance with established procedures. This entails conducting **systematic evaluations** to determine whether designated STCs are adhering to their obligations to accept asylum seekers or if they **systematically reject them**, thereby undermining their classification as a STC and the principle of non-refoulement. The agency should produce a report every two years on the consistency of STCs in accepting asylum seekers, as required under the STC framework, ensuring that the designation remains valid and justified.

3.4 Implementation

- Establish a Dedicated STC Monitoring Unit within the EUAA
- Develop a Standardized Assessment Framework

3.5 Graphic of implementation



4 Conclusive remarks

4.1 Implication for Member States

- **Cost Efficiency** – Centralized monitoring reduces duplication of efforts and administrative costs.
- **Reduced Administrative Burden** – Member States no longer need to monitor STCs, freeing up resources for national asylum processes individually.
- **Legal Certainty** – Uniform EU oversight minimizes risks of legal disputes and inconsistencies.
- **Harmonized Asylum Procedures** – Avoids national discrepancies in STC assessments, ensuring fairness.
- **Lower Litigation Risks** – Decreased likelihood of cases before EU courts and the European Court of Human Rights.
- **Political Stability** – Reduces internal pressures and political conflicts over asylum policies.

4.2 Implication for the European Institutions

- **Enhanced Policy Consistency** – A unified approach strengthens the EU's asylum framework
- **Stronger Legal Protection** – Ensures compliance with international human rights standards
- **Improved Efficiency** – Streamlined asylum procedures create faster and fairer processing
- **Strengthened Political Credibility** – Enhances confidence in the EU's approach to asylum management and its commitment to human rights
- **Improved Policy Coordination** – Supports a more cohesive asylum framework, ensuring alignment across Member States
- **Data-Driven Decision-Making** – Evidence-based assessments improve asylum policy effectiveness

4.3 Final remarks

Overall, the proposed amendments to Article 59 introduce new criteria for designating STCs, ensuring stricter **protection for vulnerable groups**. Countries must respect **non-refoulment**, offer fair asylum procedures with **appeal rights**, and ensure judicial oversight for detentions. Vulnerable groups, including LGBTQ+ individuals, minors, and victims of trafficking, require added protection. The EUAA will expand its monitoring role, **evaluating compliance** with STC definition biennially and **assessing acceptance practices** to ensure they fulfill their asylum obligations. If serious human rights violations are reported, STC designation will be suspended. The EUAA will review STC designations within three months of a Member State's request and provide initial evaluations within one year. By transferring compliance oversight to the EU, the system aims to create a fair, harmonized, and legally secure asylum process, **reducing litigation**

risks and strengthening the EU's credibility. These changes align with international human rights law and ensure better protection for asylum seekers.