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SAFEGUARDING **HUMAN RIGHTS** UNDER THE EU'S **SAFE THIRD** **COUNTRY POLICY**





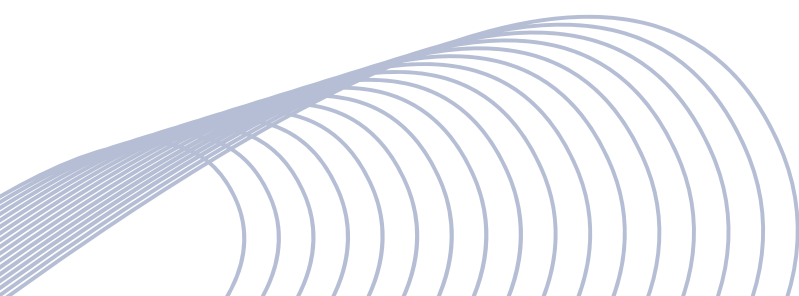
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AUTHOR'S NOTE

This Policy Paper contributes to ongoing discussions related to one of the most controversial issues challenging the European Union today—the management of migration. Formed months before the Pact on Migration and Analysis is set to come into force, it represents a collaboration between Caritas Cyprus and Perry World House. Students from PWH, the global policy engagement hub at the University of Pennsylvania, examine the “safe third country” designation through a human rights lens and, with grassroots insights from Cyprus, offer reflections on how it might be re-imagined as a rights-based tool for protection rather than a discretionary tool for exclusion. It supports Caritas Cyprus’ mission—one that mirrors that of the global Caritas Internationalis confederation—to advocate for dignity and agency for all vulnerable people, including those on the move.



ABSTRACT

This policy brief outlines the risks associated with the European Union’s “safe third country concept” (STC) in its upcoming Pact on Migration and Asylum. Though the merits and legality over STC arrangements are part of a larger debate in international human rights and refugee law, this paper takes a narrower focus and instead proceeds on the assumption that the European Union’s STC framework will move forward. We consider the obligations that must accompany any such arrangement and address three key human rights concerns: 1) how to limit the risks of *refoulement* 2) uphold fundamental rights to due process and free movement under European law and 3) eliminate the risk that an asylee is forcibly deported to a country to which they have no connection or history of transit. This paper suggests—indeed advocates—that EU policymakers reenvision the New Pact’s STC concept to ensure that it serves as a protection tool for individuals seeking international protection, rather than a discretionary tool for exclusion and externalization. These four affirmative obligations are necessary to ensure applications of the STC concept comply with human rights obligations under international and European law. Unless European lawmakers reorient the Pact appropriately based on these four obligations, the European Union’s STC concept—as it stands—threatens to erode the future of asylum in Europe and the fundamental rights of people on the move.

Key words: safe third country, externalization, due process, border management, *non-refoulement*, human rights

INTRODUCTION

In 2024, nearly one million people applied for asylum in the European Union (EU) (Eurostat, 2025). Though these levels are still well below the rates of asylum during the so-called “refugee crisis” of 2015, an immigrant threat narrative still plays a dominant role in contemporary discourse surrounding migration governance. Central to the EU’s response to migration is a *gatekeeping* approach to harden and externalize its borders, with less attention and resources devoted to humanitarian solutions. As an organization representing marginalized migrant populations, Caritas Cyprus views policies such as the “Safe Third Country” (STC) concept as illustrative of a trend among Western asylum regimes to “push out” and “thicken” the borders of Fortress Europe. However, Caritas also recognizes that STCs are emerging as the new *modus operandi*, or prevailing policy framework, in the EU and

beyond. We therefore seek to promote pragmatic—but most importantly, rights-respecting— suggestions for EU policymakers. The intention of this policy brief is not to make a normative, ethical, or legal judgement of STC policies, but rather to reorient the STC concept through a rights-based lens. This paper thus aims to work within existing policy constraints without compromising some of the most basic human rights standards in international law.

Though EU Member States are not international leaders in hosting refugees and asylum seekers as a percentage of its population, Europe remains a leading destination in absolute terms. As a result, “migration management” has become a leading priority for EU policymakers, contributing to deeper consolidation at the supranational level—as evidenced by the 1990 Dublin Convention, Treaty of Amsterdam, and creation of Frontex as an EU border control agency, among other recent changes.

The New Pact on Migration and Asylum (hereinafter “the Pact”) is the newest such reform, laying out ten regulations to harmonize migration management, including the STC concept (Regulation (EU) 2024/1348). Many outside observers, including refugee-support agencies, human rights organizations, and migration experts, caution that these changes to EU migration governance risk undermining key international human rights obligations.

As the EU advances the Pact, it must address three key concerns: how to limit the risks of *refoulement*, uphold fundamental rights to due process and free movement under European law, and eliminate the risk that an asylee is forcibly deported to a country to which they have no connection or history of transit.

BACKGROUND

The European Commission first introduced proposals on a New Pact on Migration and Asylum in September 2020, and the European Parliament and Council reached

their first political compromise after three years of negotiations. The Pact is expected to be in force as early as June 2026 (Migration and Home Affairs, 2024; Migration and Home Affairs, 2026). According to European Commission President Ursula von der Leyen, the Pact symbolizes a greater shift from “ad hoc solutions” to a “predictable and reliable migration management system” (European Commission, 2020).

First proposed in September 2020, the Pact has been subject to multiple stages of negotiations

among member states due to competing concerns about refugee responsibility-sharing, border control, and strategies to streamline and harmonize the asylum process at the European supranational level. These concerns were particularly salient to member states at the EU’s external border, who are the first to process asylum claims under the changes introduced by the Dublin Regulation. The governments of Italy, Greece, and Spain have historically argued that the Dublin procedures inequitably distribute migrant “burden-sharing” (Armstrong, 2020)¹. Such political sentiments were further exacerbated in 2015, when displaced Syrian refugees fleeing persecution and large-scale violence sought protection on European shores. In that year alone, almost 4,000 Syrians died crossing the

Mediterranean (IOM, 2016), and the EU’s lack of a swift and coordinated approach left member states, including Angela Merkel’s Germany, to respond individually. Though the response to such a forced migration trend is better framed as a



humanitarian crisis, many observers inside Europe saw an influx of migrants “overwhelming” the system, justifying the need for stronger securitization measures. In the decade following this perceived “crisis,” EU member states have struggled to reach a political consensus on a harmonized approach to migration. One outcome of these talks was new legislation to reform the

¹ Spain is one of the key destinations for asylees in the EU, registering 143,000 applications and accounting for 17% of the EU+ total in 2024 alone (European Union Agency for Asylum, 2025).

Common European Asylum System (CEAS), including the approval of the new EU Pact. Rasmus Stoklund, Dutch Minister for Immigration and Asylum, alleges that the new Pact will reduce the “pull factors” that encouraged irregular immigration to the EU (European Council of the European Union, 2025). The Pact has been described as a “European solution” for “more secure European borders” (European Commission, 2024).

Over 2,000 pages in legal text, the Pact overhauls the European asylum regime and introduces a number of key changes, including more stringent screening processes, a biometric screening procedure through EURODAC, and a list of “safe countries of origin” to which an asylum seeker can be returned—including Egypt, Tunisia, Colombia, and Morocco, among others. A new “solidarity pool” was also a feature of the Pact, a scheme which allows member states to fulfill their “solidarity” obligations through 21,000 relocations or EUR 420 million in financial contributions to alleviate asylum pressures for states at the European external border (European Council, 2025). The Pact also established the Asylum Procedure Regulation (APR), a new, streamlined procedure that will standardize asylum processing across the EU once it enters into force on 12 June 2026.

Of the rules listed in the Pact, our focus is on the expansion of the STC concept, whereby states can dismiss asylum claims “when asylum seekers could have sought and, if eligible, received international protection in a non-EU country that is considered safe for them” (European Council, 2025). December 2025 reforms to the Pact radically expanded the STC concept’s applications (European Parliament, 2026). Significant changes included the removal of the “meaningful connection” requirement of STC designations, allowing an asylum seeker to be sent to a country to which they have no ties or even a history of transit, as long as the sending country has signed a

bilateral or multilateral agreement with the receiving country (European Council on Refugees and Exiles, 2025). Now, asylum seekers can be sent to STCs if one of the three following conditions are met in their case:

- “The existence of a connection between the applicant and the third country, such as the presence of members of their family in the country, the previous presence in the country of the applicant, or if there are linguistic, cultural or similar links.”
- “The applicant has transited through the third country on the way to the EU, and they could have requested effective protection there.”
- “...arrangement exists with the third country at a bilateral, multilateral or EU level for the admission of asylum seekers, with the exception of unaccompanied minors” (European Parliament, 2026).

The second main change included removing the automatic suspensive effect of appeals for applications deemed inadmissible on STC grounds. Member states in favor of these modifications argued that they would “enhance efficiency, provide greater flexibility in managing asylum applications, particularly during times of disproportionate migratory pressure, and reduce administrative burdens” (European Commission, 2025). Furthermore, the Pact reforms will remove asylum seekers’ right to stay in the EU during the appeal process so long as an agreement exists between that member state and a third receiving country.

Critics note that the Pact continues to put pressure on peripheral countries and expands border externalization processes—rather than focusing on pathways to incorporate asylum seekers into the existing population (Karageorgiou et al., 2022). Human rights advocates also warn that the Pact reinforces the idea that people on the move are not people requiring “protection” but people needing to be “enforced” or “managed.”

ORIGINS AND EVOLUTION OF THE “SAFE THIRD COUNTRY” CONCEPT

The “safe third country” concept first emerged in the 1970s and 1980s when states began considering “protection elsewhere” solutions (Foster, 2008) to curb unauthorized migration and supposed asylum venue shopping (Osso, 2023). Although Switzerland and Scandinavian countries had already piloted variations of the STC concept, the STC question did not enter international legal debates until the United Nations High Commissioner for Refugees’ (UNHCR) Executive Committee made a series of recommendations in 1979 to address “burden-sharing” obligations among recipient countries (CoE, 1979).

Legal scholar Berfin Nur Osso describes early versions of the STC concept as a migration management strategy for “refugees in orbit”—or refugees in legal limbo who were denied protection in potential host countries (Osso, 2023, p. 279). Maria Gil-Bazo has studied the application of STC agreements in the aftermath of increasing secondary movements in the 1990s, using South Africa, the US, and Spain as case studies of implementing countries (Gil-Bazo, 2015). STC concepts are “premised on the idea that people who flee their countries due to a wellfounded fear of persecution should lodge their asylum claims in the first safe country they reach” (Osso, 2023, p. 280). As irregular migration grew in political salience, so did interest in STC agreements—both formal and *ad hoc*—as a potential mitigating force.

In 2004, the US and Canada signed an STC agreement stipulating that the first country an asylum seeker entered was responsible for their asylum application (Gil-Bazo, 2015, p. 61). In the US-Canadian early interpretation of the STC concept, a country of first asylum had to be a country where an asylum seeker “firmly resettled” as opposed to a state where they were merely present, briefly transited through, or temporarily

stayed (Gil-Bazo, 2015, pp. 61-63). This agreement faced challenges in Canadian courts but ultimately prevailed with additional amendments, paving the way for future agreements.

Aiming to harmonize EU migration policy, the Dublin Regulation formally laid the groundwork for the STC concept. The regulation, which came into force in 1997, made it so that the first member state an asylum seeker entered was responsible for processing their asylum application (Lewis, 2021). Early iterations aimed to combat an alleged phenomenon known as “asylum shopping”² where asylum seekers would submit applications in two or more countries, purportedly seeking the most favorable conditions possible (Cortinovis, 2018). In practice, Dublin III Regulation assumed that all EU member states were “safe” and possessed adequate asylum systems to receive asylum seekers (Gil-Bazo, 2015, p. 66). STC policies were susceptible to legal challenges from the start. In two later cases involving the removal of asylum seekers from the UK and Ireland to Greece, the Court of Justice of the European Union (CJEU) ruled that such a blanket interpretation was unlawful. The Court’s ruling “effectively amount[ed] to a reversal of the foundation of the Dublin system” and the “mutual trust among Member States that they are all safe” (Gil-Bazo, 2015, p. 69).

Also in 1997, the Council of Europe issued guidance to member states considering STC agreements, including a requirement that STCs must observe international human rights standards relevant to asylum, “including compliance with the prohibition of torture, inhuman or degrading treatment or punishment” (Council of Europe, 1997, p. 112). In 2013, the European Parliament

² More recently, some experts have argued that the term “asylum shopping” is misleading, as it implies that there are clear binaries between voluntary and involuntary choices among migrants and a general awareness of asylum law domestically versus at the EU level.

issued Directive 2013/32, which permitted a member state to apply the STC concept in domestic immigration law, but only if relatively rigorous safety criteria in line with international human rights law were met (European Parliament, Council of the European Union, 2013).

The European Union’s proposal for its own STC approach did not emerge from a vacuum. On the contrary, it was influenced by broader border externalization efforts introduced in the US, Australia, Israel, and more recently, in Europe as seen with the UK-Rwanda and Italy-Albania agreements. The first Trump administration also signed STC agreements with Guatemala, Honduras, and El Salvador, and in November 2025, the US announced additional agreements with Uganda, Belize, and Paraguay. (American Immigration Council, 2025). In 2025, the US government also deported eight men to South Sudan, with all but one having no connection to the country, despite the US State Department’s own travel advisory listing the country as “unsafe” (Schwartz, 2025; U.S. Department of State, 2025)³. Such third country deportations faced legal challenges but ultimately prevailed in the US Supreme Court (*Department of Homeland Security v. D.V.D.*, 2025).

In 2022, the United Kingdom announced that it was planning to designate Rwanda as a “safe” country that could host migrants who were apprehended in the UK; however, the UK Supreme Court decided that the government’s policy was unlawful in 2023, citing defects in Rwanda’s asylum system and the risk of *refoulement* (Walsh, 2024). Italian courts and the European Union Court of Justice (ECJ) also ruled that the Italian government’s STC arrangement with Albania broke international law, again citing

³ During the first half of 2026, over half of South Sudan's population (7.8 million people) are projected to face high levels of acute food insecurity, with over 300,000 people displaced by renewed internal violence in Jonglei State alone since April 2023 (World Food Programme,

risks of *refoulement* (Amouri, 2025). The formulation of the EU’s STC concept also follows a deal between the EU and Turkey, implemented in 2016 to reduce the number of asylees arriving at the EU’s external border, particularly in Greece. All irregular migrants who arrived on Greek islands were “returned” to Turkey, and in turn, the EU offered financial aid to assist Turkey with asylum adjudication and resettlement costs.

One significant alteration the EU Council made to previous STC policies during recent negotiations of the Pact is the removal of the meaningful link requirement between an asylum seeker and the state processing its asylum claim. An early version of the meaningful link concept emerged in Council Directive 2005/85/EC—also known as the Asylum Procedures Directive—which was adopted on December 1, 2005. Specifically, Article 27(2)(a) mandated that member states could only apply the “safe third country” concept if national law laid down “rules requiring a connection between the person seeking asylum and the third country concerned on the basis of which it would be reasonable for that person to go to that country” (Council Directive 2005/85/EC, 2005; Official Journal of the European Union, 2005). While this does not formally codify a meaningful link requirement in international law, it requires member states to follow national procedures that must guarantee a meaningful link between an individual and a third country. Additionally, the UNHCR has repeatedly stressed to countries the importance of establishing a meaningful link or connection between an asylum seeker and a third country throughout the Pact’s evolution (European Parliamentary Research Service, 2026). Although the previous link requirement was tenuous—as a link could be deemed “meaningful” if an asylee simply traveled through a state or had relatives there—it legitimized at least one guardrail against accelerated asylum procedures that undermine refugee agency. The EU has not defined what “safety” criteria will entail for any future STC

agreements. Notably, under current EU law, an STC needs only to be a state free from torture; it does not have to be a party to the 1951 Refugee Convention. In that respect, STC “2.0” can be seen as a radical departure from previous agreements. Two experts on the policy, Gaia Romeo and Frowin Rausis, argue that removing the connection requirement “marks a major shift—toward an ‘(un)safe fourth country’ approach” (Romeo & Rausis, 2025).

HUMAN RIGHTS IMPLICATIONS

The Real Risks of Refoulement

The principle of *non-refoulement* prohibits EU Member States from displacing asylum seekers from their jurisdiction and returning them to a place where they are likely to experience serious human rights violations. This includes persecution on grounds of race, religion, nationality, political opinion, or membership of a particular social group, as well as exposure to torture, inhuman or degrading treatment, or other fundamental rights violations. *Non-refoulement* is firmly rooted in international and EU law, most notably Article 33(1) of the 1951 UN Refugee Convention. Within EU law, it is reflected in Article 78(1) of the Treaty of the Functioning of the European Union and Articles 18 and 19 of the Charter of Fundamental Rights of the European Union, and further operationalised through secondary legislation such as the EU asylum acquis and the Return Directive (PICUM, 2025). In essence, *non-refoulement* is designed to provide an international standard of protection that extends beyond domestic or regional legislation, requiring meaningful, individualized assessment of asylum claims and prohibiting removals carried out without adequate procedural safeguards.

Crucially, *non-refoulement* principles address not only direct returns to unsafe countries but also to indirect or “chain” refoulement, whereby responsibility is shifted to third countries deemed “safe” but that lack functional asylum processing

systems (EPRS, 2024).⁴ Even when EU Member States do not themselves remove individuals to countries where they risk facing persecution, transferring asylum seekers to third countries whose asylum systems cannot be effectively monitored creates a real risk that they will subsequently be transferred to unsafe destinations. International and EU jurisprudence makes clear that states remain responsible when they either directly were aware or able to reasonably determine that such onward *refoulement* was a foreseeable consequence of their actions (Daniel & Ghráinne, 2024). Passing responsibility along a chain does not extinguish liability.

This concern is illustrated by the failure of the Italy–Albania arrangement, which sought to externalise asylum processing outside EU



territory. A central legal flaw of the arrangement lay in Italy’s inability to exercise effective oversight due to both a lack of proximity and authority and ensure that Albania’s asylum system

⁴ Between 2014 and 2017, Israel has secretly deported over 4,000 Eritrean and Sudanese asylum seekers to Rwanda and Uganda via their “Voluntary Departure” policy. None of the asylum seekers were given the opportunity to apply for asylum in Rwanda or Uganda prior to departure, subjecting them to robberies, threats and arrests, and pushing them to embark on dangerous journey that included passing through South Sudan, Sudan and Libya in search of protection. Many of the asylum seekers experienced human trafficking, incarceration, harsh conditions of starvation, violence, slavery in torture camps in Libya and a dangerous crossing of the Mediterranean Sea from Libya to Europe (The Guardian, 2022 and Border Criminologies, 2018).

consistently complied with EU and international standards (Mulders, 2025). Without such monitoring, Italy could not guarantee that individuals transferred to Albania would be protected against onward removal to unsafe countries.⁵ As a result, the arrangement risked violating the principle of *non-refoulement* by exposing asylum seekers to a chain of responsibility gaps, undermining the very safeguards that international protection is meant to ensure. Borrowing from an important distinction made by Berfin Nur Osso, if EU Member States are to “extend the borders to manage mobility beyond EU territory,” then they must “extend the reach of rights and remedies” to asylum seekers in receiving third countries in order to truly fulfill their international human rights obligations (Osso, 2023, p. 296).

To mitigate the heightened risk of *non-refoulement* created by mandatory accelerated procedures, robust and uniform standards are needed to ensure that asylum claims continue to receive thorough, individualised assessment despite compressed timelines. Equally, EU Member States must be held accountable for transfers to third countries through a clear, internationally standardized definition of “safe” conditions and the continuous monitoring of those conditions in practice. Without enforceable procedural safeguards and meaningful oversight mechanisms, efficiency-driven reforms risk systematically undermining the core protections that *non-refoulement* is intended to guarantee.

Due Process Without A Suspensive Appeal

One of the most consequential of the December 2025 modifications is the removal of the

⁵ In January 2025, Italian vessel *Cassiopea* reached the Albanian port of Shengjin, containing 49 people—primarily Egyptian and Bangladeshi citizens. They were transferred to the Gjader facility for “fast-track” processing as asylum seekers from countries deemed safe under the APR, limiting the depth of individualized assessment (ANSA English, 2025).

automatic suspension effect of appeals. In asylum law, a “suspensive effect” is the right of the asylum seeker to stay in the host country until the court comes to a decision regarding their appeal against a negative decision. This right is fundamental in protecting asylum seekers against *refoulement*, which can result in human rights violations if the court decision later reveals that protection was, in fact, warranted.⁶

Under Article 68 of the new APR, the suspensive effect of appeals will no longer be automatic in all circumstances, giving authorities the power to enforce a deportation before an appeal is decided in certain situations (European Union, 2024). The Commission approved a proposal in December 2025 to amend the APR to remove the automatic suspensive effect of appeals if an asylum seeker’s case was deemed inadmissible based on STC grounds (European Parliament, 2026). The Commission explained that “removing the automatic suspensive effect of the appeal 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.” (European Commission, 2025) Several Member States supported the change, arguing that it would reduce procedural delays and thus be consistent with the accelerated border procedures process, which would newly be made mandatory under the APR.

Under Article 68 (5) of the APR, the applicant may have as little as five days from the date on which they are notified of their decision to request

⁶ Across the EU in 2025, approximately 20.9% of all final asylum decisions following an appeal or review were positive (overturning the initial rejection). The highest shares of positive final decisions in appeal or review were recorded in the Netherlands (46.0%), Lithuania (43.1%) and Austria (34.6%). Removing the automatic suspensive effect means that, statistically, thousands of individuals who would have legally qualified for protection are at risk of being deported before their successful appeal can be finalized (E

for suspensive effect pending the appeal outcome (European Union, 2024). While Member States have discretion to determine the exact timeline, most states require such requests to be lodged within five to seven days. Moreover, Article 68 (6) narrows the right to remain, allowing Member States to provide in national law an exception to the suspensive effect if they consider the appeal “to have been lodged merely in order to delay or frustrate the enforcement of a return decision which would result in the applicant’s imminent removal from the Member State” (European Parliament and Council of the European Union, 2024).

This change will undermine numerous human rights conventions related to due process. The United Nations Declaration of Human Rights (UDHR), signed by all EU member states, includes due process guarantees to apply equally to all inhabitants of a territory regardless of citizenship status (United Nations, 1948). Both the UDHR and the International Covenant on Civil and Political Rights (ICCPR) stipulate that individuals who believe their fundamental rights to seek and enjoy asylum have been violated must have “the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law” (United Nations, 1948; United Nations [General Assembly], 1966). The European Convention on Human Rights also protects due process rights, and the Charter of Fundamental Rights of the European Union (CFR) guarantees the rights to equality before the law, effective remedy, fair trial, and presumption of innocence (Council of Europe, 1950; European Union, 2010). None of these rights are conditional on citizenship status.

The 1951 Convention Relating to the Status of Refugees and its 1967 Protocol guarantee specific due process rights for refugees, including the right to appeal a negative asylum decision; all EU member states have signed and ratified the

instruments. Article 16 of the 1951 Convention mandates that “a refugee shall have free access to the courts of law on the territory of all Contracting States” (United Nations, 1951). The Convention also stipulates in Article 16 (2) that “the refugee shall be allowed to submit evidence to clear himself, and to appeal to and be represented for the purpose before competent authority or a person” (United Nations, 1951). The ability of a refugee to “submit evidence to clear himself, and to appeal...,” is also guaranteed in Article 32 of the 1951 Refugee Convention (United Nations Refugee Convention, 1951). Defenders of the December 2025 reforms to the Pact argue that asylum seekers maintain the right to appeal their cases—they simply must do so from the STC they have been sent to. However, the ability of asylum applicants to launch appeals from STCs will almost certainly be limited by structural obstacles.

As it stands, removing the automatic suspensive effect of appeals is in clear violation of the UDHR, ICCPR, and the 1951 Convention and its 1967 Protocol, as asylum seekers sent to a STC will have little legal recourse to challenge negative decisions. Forcing asylum seekers to launch appeals from STCs first violates the UDHR, ICCPR, and CFR’s guarantees of equality before the law, as appellants will have to navigate the legal system in a wholly different fashion than EU citizens and their non-citizen counterparts whose cases were not dismissed on STC grounds. Additionally, there is no guarantee that legal counsel available in STCs will be licensed to practice EU asylum law or familiar with the EU’s legal cannon, in violation of Article 16 of the 1951 convention that refugees “be represented” in their appeals. If applicants attempt to hire a lawyer from within the EU, they may have to conduct all of their meetings virtually, a challenge given that many asylum seekers have not been afforded digital literacy training or may face structural obstacles to reliable internet in STCs. Asylum applicants can launch pro se appeals from STCs but will lack access to many legal resources they

would otherwise have within an EU member state. Logistical barriers will also challenge the ability of asylum seekers in STCs to “submit evidence to clear” themselves, as guaranteed in Article 31 of the 1951 Convention, from abroad as they may well lack access to internet, photocopiers, and scanners required to send documents they could otherwise submit in person.

Furthermore, the Commission’s proposed amendment removing automatic suspensive effect in STC cases risks asylees being sent to an STC before a judge determines whether that country meets the safety criteria for their specific situation, which is especially concerning for members of vulnerable groups such as LGBTQ+ individuals and women⁷.

Thus, the decision to remove the automatic suspensive effect of appeals renders due process systematically unavailable for asylum applicants rejected on the basis of STC criteria. EU member states that choose to deport asylum seekers before the appeals process will violate numerous human rights standards they are legally bound to uphold.

REINVISIONING THE STC CONCEPT: AFFIRMATIVE OBLIGATIONS CONSIDERATIONS FOR SAFEGUARDING HUMAN RIGHTS

⁷ As of 2026, at least 65 jurisdictions worldwide still criminalize private, consensual same-sex acts, with approximately 12 countries (including STC candidates like Afghanistan or those in the Middle East) maintaining the death penalty as a possible punishment (Human Dignity Trust, 2026).



In light of the human rights concerns previously mentioned, this paper suggests—indeed advocates—that EU policymakers reenvision the New Pact’s STC concept to ensure that it serves as a protection tool for individuals seeking international protection, rather than a discretionary tool for exclusion and externalization. These four considerations are necessary to ensure applications of the STC concept comply with human rights obligations under international and internal EU law. The following four considerations must be interpreted as affirmative obligations rather than mere suggestions.

Revise the safety determination criteria

In line with the new APR, the Pact agrees that a “safe” receiving country does not have to be a party to the 1951 Convention to be a party to an STC but merely must provide “effective protection” for asylum seekers (European Commission, 2025). Under the APR, “third countries can be considered safe only when their national systems can process applications and provide effective protection where needed, ensuring protection against refoulement and absence of risks of persecution, threat to life, or inhuman or degrading treatment.” This criteria, which is overly permissive and vague, leaves significant room for discretion. As Cathryn Costello (2016) argues in the case of safe country of origin policies, safety designations “must be based on rigorous processes and sources, if they are to be credible and fair,” as “institutional structures thus far, at national and particularly at the EU level, seem likely to politicise determination.” Should an STC concept proceed,

we recommend the following stipulations for determining safety criteria:

- Establish an EU-wide list for “safe third countries” to prevent Member State divergence and encourage robust evidentiary fact-facting at the multilateral level. Any “safe” country must be a party to the 1951 Convention Relating to the Status of Refugees and its corresponding 1967 Protocol.
- Any STC must also be evaluated with respect to UDHR Article 9, ICCPR Article 9, and the Nelson Mandela Rules to guarantee freedom from arbitrary, prolonged, and inhumane detention.
- Create a methodology for baseline “safety” criteria that includes both qualitative and quantitative metrics for access to food, water, shelter, healthcare, education, material dignity, access to services, and the right to gainful employment. The methodology should also take into consideration the political and economic capacity of the receiving country to accommodate incoming migrants. This entails verifying that the designated STC is able to guarantee conditions that uphold material dignity and enable applicants to live in safety and with a degree of autonomy.
- Involve a diverse set of stakeholders from civil society for independent review and consultation, such as the UNHCR and human rights organizations.
- Provide the opportunity for asylees to rebut safety determinations in domestic and European courts, with the acknowledgement that countries



“generally” or “consistently” safe are not presumptively safe for some minority populations or particularly vulnerable groups.

Define a meaningful link

Although the Pact’s new revisions completely remove the requirement of a “meaningful link” criterion, a “meaningful connection” can still serve as grounds for removal to an STC in cases where no bilateral agreement between the sending and receiving country exists and the asylum seeker has never transited through that STC.

Definitions of a “meaningful link” have been historically vague, and interpretations have included a cultural and/ or linguistic affinity, familial connections, and previous presence within a country via transit. This ambiguous framework will enable discretionary transfers that disregard the individual circumstances of the asylum seeker. It, for example, raises the possibility that an asylum seeker can be removed to any country where their native language is widely spoken, even if they have never set foot or have familial connections to the country. As one academic argues, “There was never a requirement for the link to be meaningful. There was a requirement for a link to *exist*” (Gil-Bazo, 2026). Any applications of the STC concept made by nations should reintroduce “meaningful link” as a substantive safeguard, but with a defined framework that:

- Defines ***meaningful*** connection as prior residence within the country (more than six months), presence of immediate family member(s) or partners with lawful status residing in the nation, prior established social ties (education, employment, community participation), or voluntary transfer to the country with free, informed, and prior consent.
- Defines an insufficient or “***meaningless***” connection: includes mere transit through a country (<6 months), involuntary presence within the country, or cultural or linguistic ties alone.

Guarantee a fair and equitable appeals process

Despite the Commission's claims that the principle of *non-refoulement* will be upheld, the removal of the automatic suspensive effect poses a wide range of human rights risks, some of which are even acknowledged in the Commission's proposal itself: "UNHCR considered that removing the automatic suspensive effect could increase detention risks during appeals" (European Commission, 2025). Though the word "detention" implies short-term periods of confinement, it is important to note that many asylum seekers may be held in carceral processing centers for several months or even years.⁸ Factors such as accelerated timelines, limited access to legal aid, translation, and procedural information can seriously hinder an asylum seeker's ability to request the suspension.

Should the removal of the automatic suspensive effect of appeals be maintained, we recommend that:

- The suspensive effect be explicitly and automatically granted to applicants when there is a credible risk of irreparable harm or a violation of human rights. Such cases should be decided on an individualized basis as opposed to fixed categories of vulnerability. For example, this approach would include an applicant requiring urgent medical attention or an applicant with a disability. Appropriate procedural guardrails must be in place during asylum adjudication to account for the sensitive nature of certain claims; for example, see [UNHCR's recommendations for protecting the distinct needs of LGBTQ+ applicants](#).⁹

⁸ In these cases, "prolonged or indefinite confinement" is a more appropriate word than detention.

⁹ UNHCR recommendations include "establishing trust between the interviewer and applicant, asking self-identified LGBTQ+ asylum seekers their preferred name, gender, pronoun and title during registration and protection interview, and Avoiding expressing, verbally or physically, "any judgment about the applicant's sexual orientation, gender identity, sexual behaviour or relationship pattern""

- Reaffirm an asylee's right to challenge the STC in question and appeal the decision, before removal, if there is a "well-founded fear of persecution" for the asylee. This includes case-by-case determinations where the burden of proof is not on the asylum seeker alone.
- The minimum time period granted by a Member State for an asylee to request suspensive effect following the notification of a negative decision should be extended from five days to at least 60 days, to ensure they have adequate opportunity to prepare the application and acquire legal counsel. From a practical perspective, it is difficult to find counsel and prepare supporting documents in even 30 days. When the burden of proof falls on the asylum seeker, extended timeframes are necessary to exercise procedural rights.
- Removals during pending appeal procedures are strictly limited to countries where sufficient legal, linguistic, accessibility and technological resources are guaranteed for the applicants to effectively participate in the judicial proceedings. Access to legal counsel, in particular, must be secured before removal to an STC.

Normalizing transparency and accountability measures in STC agreements

While countries generally publicize the procedural and operational aspects of their STC agreements, the full terms are rarely shared. STCs are generally incentivized to cooperate with sending countries and take responsibility for asylum processing in exchange for actual or perceived financial benefits, security guarantees, or geopolitical sway. This practice risks the instrumentalization of STC agreements and migrant crises. For example, Turkey's 2016 Agreement with the EU included a 6 billion euro sum that was disbursed by the EU for the Facility of Refugees in Turkey.¹⁰ The EU also promised to accelerate visa liberalization plans for Turkish citizens and affirmed its "commitment to

¹⁰ Turkey remains one of the world's largest refugee-hosting nations; as of early 2026, it hosts 2.34 million Syrian nationals under temporary protection, despite the voluntary return of approximately 600,000 people following the fall of the Assad regime in December 2024 (UNHCR)

re-energise the [EU] accession process” for Turkey (European Council, 2016).

The European Union’s economic strength and geopolitical influence position it as a powerful negotiating partner, meaning that some countries may view STC agreements as opportunities to secure financial, political, or diplomatic benefits. This dynamic has raised concerns among human rights observers that, in the absence of strong oversight, receiving states may prioritize strategic interests over fully implementing and enforcing asylum seekers’ rights and protection obligations. Should bilateral and multilateral agreements proceed under the new Pact, we recommend that:

1. The terms and conditions of each agreement are publicly available, including the sources and recipients of specific financial packages and measures.
2. The establishment of an independent, non-governmental monitoring mechanism to conduct bi-annual evaluations of STC agreements. This body would assess whether financial transfers to designated third countries are being used to strengthen asylum systems, support resettlement programs, and enhance asylum administration capacity—guaranteeing that such incentives are functioning in the spirit of responsibility-sharing.

CASE STUDY

HYPOTHETICALS

The following case studies are not based on real individuals but are instead intended to represent common experiences of asylum seekers in the EU. As the New Pact is not yet in force, it is impossible to say with certainty how member state governments will apply its provisions. Based on the most recent iteration of the New Pact, the following scenarios and list of STCs are entirely possible.

Case Study One: Meaningful Link - Abdullah

Abdullah is a twenty-six year old man from Yemen's Muhamshen community. The Muhamshens are an Afro-Arab group comprising 10-15% of Yemen's population who face extreme social, economic, and legal discrimination (Minority Rights Group, 2025). Abdullah grew up in northern Yemen in a small Muhamshen community on the outskirts of regional hub, Sa'dah. His family lived in extreme poverty, and he only finished eighth grade before dropping out of school to work as a street cleaner in the city. A year after he dropped out of school, civil war broke out in Yemen. Houthi militias seized Sa'dah and surrounding areas early in the war, leading Abdullah to lose his job for the local government. Houthi forces also took over Abdullah's home community to use as an outpost to monitor traffic into the city; all residents were forced to leave by armed militia and called racial slurs. Abdullah and his family moved into a makeshift camp for internally displaced people but were continuously harassed by non-Muhamshen residents. When the UNHCR eventually established a presence in Sa'da, Abdullah and his family attempted to apply for shelter kits, food rations, and cash assistance, but were threatened to turn over their ration cards to camp residents with connections to Houthi militants. Abdullah lived in the camps for four years, barely getting by, but decided to flee after violence surged again in the north, and Houthis began forcefully recruiting young men. He made the long, dangerous journey to Greece with the aid of smugglers. He could not afford the price up front so agreed to take an informal loan with a high interest rate. He arrived in Greece alone while still a minor and already heavily indebted to the smuggling operation he used. Afraid for his life if he did not immediately begin paying back his debts, and unaware of Greece's legal framework around asylum, he did not initially apply for asylum but instead found informal labor through a construction company. He managed to avoid detection from immigration authorities for years but decided recently to apply for formal asylum upon contact with a family friend who successfully petitioned for asylum in Greece.

A week after submitting an asylum application, Abdullah received word that Greece was not willing to accommodate his request, although they recognized that sending him back to Yemen would likely constitute refoulement. Instead, Greek immigration authorities informed him that they were sending him to Algeria, a country he has never been to. They cited Algeria's relative safety as well as a perceived "meaningful link" between Abdullah and the country as Abdullah is Sunni Muslim, speaks Arabic, and has an estranged older sister who resides in Algeria as she married an Algerian man prior to the civil war breaking out in Yemen. This sister is fifteen years older than Abdullah, and he has not been in contact with her since she left Yemen. Yemeni Arabic and Algerian Arabic have low mutual intelligibility, which will likely prevent Abdullah from acquiring dignified employment, and individuals of African descent face heightened discrimination, especially migrants, with many recent reports of raids on migrant communities and arbitrary detention and expulsion (Statewatch, 2025). He is very worried that he will be sent back to Yemen without due consideration of his asylum claim, as although Algeria is a signatory to the 1951 Convention and its 1967 Protocol, it has no national asylum law (UNHCR, 2026a).

Abdullah does not feel in any way connected to Algerian society, despite superficial similarities in language and religion. His sister has not replied to any of his attempted Whatsapp calls, and he is unsure if she even has the same phone number from when he was a child.

Implications: *The current language of the "meaningful link" requirement is incredibly vague and broad. If implemented as currently written, the policy will allow EU immigration officials to pass sweeping judgements on perceived "cultural" and "linguistic" similarities that may not translate into actual potential for social integration. This opens the door to immense discretion on behalf of immigration officers and judges.*

Case Study Two: Transit - Amina

Amina is a thirty-one year old mother of four from Darfur, Sudan. She fled her hometown after ethnic violence against non-Arab Sudanese communities to which she belongs, perpetrated primarily by the Rapid Support Forces (RSF) paramilitary group with additional violence by the Sudanese Armed Forces (United States Holocaust Memorial Museum, 2025). In 2024, Amina's village was torched by the RSF, her husband was killed, and she was raped by militia men in front of her children. She and her children sought refuge in a displacement camp in neighboring Chad, but due to food shortages, drought, overcrowding, and underfunding, she struggled to provide for her children, and they all began suffering acute malnutrition. Amina struggled to find work as a single woman and was frequently threatened with sexual violence by gangs in the camp. Fearing for her and her children's safety in Chad, and seeing no hope for resolution of the conflict in Darfur, Amina made the difficult decision to attempt the dangerous journey from Chad to Italy, via Niger and Libya.

She saved up money through informal labor in the camps for a year and paid smugglers to facilitate the voyage. She and her family arrived in Italy after a perilous journey where Amina again experienced sexual assault at the hands of the smugglers.

Upon arriving in Italy, Amina applied for asylum for herself and her children and temporarily stayed in a shelter for unaccompanied female migrants in the suburbs of Rome. Amina resided in Italy for only three weeks before her case was rejected on the grounds that she transited through Chad, Niger, and Libya, and had a long-term stay in Chad. Italian migration authorities now argue that Amina's year-long stay in Chad proves that she was safe there and must return to Chad and build a life there. Chad does have a legal framework for refugee recognition and resettlement, but enforcement is weak, and the burgeoning crisis in Sudan, coupled with significant humanitarian funding cuts, mean that services are stretched incredibly thin (UNHCR, 2026b). Solo women face additional challenges in the form of gender-based violence and also lack of agency in navigating Chad's legal system (Alima, 2026).

She was ordered to immediately leave the EU, a decision she appealed. Due to the New Pact's removal of the automatic suspensive effect of appeals, Amina was informed that the Italian government already booked removal flights for her and her children to Chad, and she would have to launch her appeal from there. Amina was sent to N'Djamena, the capital of Chad, where she has never been before and knows no one. The cost of living is incredibly high, and she has struggled to find employment aside from selling produce in markets, which does not provide enough income for safe housing, so she had to make the difficult decision to ask her children to also sell goods at the market. Still, Amina and her kids can only afford one room in a shared apartment with no electricity. Lacking internet access and forced to work long hours, Amina has effectively had to give up on appealing her asylum case in the EU, as she has no way to contact lawyers there aside from brief, costly visits to internet cafes, and there are few digital, pro-bono services to begin with. N'Djamena also experiences frequent, widespread electricity outages (U.S. Department of Commerce, 2020). Additionally, even within Chad, Amina struggles to access services as much of Chad's administrative and legal procedures operate in French, which Amina does not speak.

She and her children have also been suffering from severe symptoms of post-traumatic stress disorder, but mental health clinics in Chad are few and far between, seeking treatment is highly stigmatized, and costs are expensive and out of pocket (Inter-Agency Standing Committee, 2024). She is incredibly concerned for her future given her financial instability, social isolation, and continued threats of sexual violence by youth gangs in the neighborhood she lives in, but sees little other path forward now that her EU asylum case has been rejected.

Implications: *As most refugees and asylum seekers to the EU come from the Middle East, Africa, and South Asia, very few arrive to the EU without transiting through an intermediate country (European Union Agency for Asylum 2024). Under this provision, only those fleeing countries on the EU's borders or individuals with greater financial means who can book plane tickets would be eligible for asylum in the EU.*

The new criteria does not specify a required length of stay in the transit country or demonstration of existing networks there, unlike precedents elsewhere, such in American refugee law which requires proof of "firm resettlement," constituted by offer of permanent residency in a transit country (U.S. Citizenship and Immigration Services, 2025). While the criteria does specify that asylum seekers must have been able to "seek effective protection" in the third country, the New Pact does not actually define what "effective protection" means. There is not even a requirement that STCs be signatories to the 1951 Convention and its 1967 Protocol. Additionally, the mere existence of an asylum and refugee legal framework does not necessarily translate into actual protection.



Case Study Three: Bilateral Agreement - Marco

Marco is a forty-seven year old from Carácas, Venezuela. Marco was a government employee for over twenty years who worked for the Venezuelan Central Bank. He initially supported the socialist government of Nicolás Maduro (now Delcy Rodrigues following recent geopolitical events), but began to lose faith in the regime after he noticed large sums of money disappear from the bank department he worked in, and when he flagged the issue to his supervisors, he was threatened with termination should he not stay quiet. After witnessing Venezuela descend into worse financial instability and hyperinflation, Marco decided to risk his job by speaking anonymously with a major news outlet in Venezuela and alerting them to the apparent corruption taking place at the Central Bank. Two days later, Marco was fired from his job without explanation. He was arrested a week later and detained for three weeks, accused of illegally sharing classified information. He was eventually released without charge, but the interrogator assigned to his case warned him that if he ever spoke on the issue again, he would risk long-term imprisonment. Marco was seriously concerned about this threat as the Venezuelan government has detained hundreds of political opponents, many of whom face torture.

Upon his release, Marco tried numerous times to find work, but was repeatedly rejected for jobs in the banking sector that he seemed otherwise qualified for, leading him to believe that the government placed him on some form of blacklist. Frustrated with his experience and desiring change for his children's generation, Marco joined Voluntad Popular, the primary opposition party. He attended weekly meetings and helped organize a few protests from the back end. While Marco attempted to keep his involvement clandestine, one of his neighbors reported him to the police after witnessing him speaking with a Voluntad Popular leader on the street. Marco was taken into custody once more, severely beaten and threatened, and released a week later.

A week after his release, Marco gathered his and his wife's savings and applied for tourist visas to Spain. Their visas were approved as he had previously visited the EU for business and left according to the terms of his visa. Upon arriving in Madrid, Marco applied for asylum for him and his family.

After a week's wait, Marco received notice that Spain would be removing him and his wife to Turkey as the government recently signed a bilateral agreement with the Turkish government to manage migration flows by sending asylum seekers in the EU to Turkey, similar to the 2016 EU-Turkey deal [1]. Turkey signed onto this agreement in return for increased aid for refugee camp operations and promises to accelerate Turkey's EU accession.

Marco and his wife have never been to Turkey and do not speak Turkish, which is a requirement for nearly every job in Turkey. They have effectively no means to make an income other than applying for cash assistance from Turkey's asylum agency and are living in poor housing conditions and incredibly socially isolated. Turkey is additionally currently facing hyperinflation and an increasingly authoritarian political system, conditions eerily similar to the ones Marco fought against in Venezuela (U.S. Congress, 2025).

Implications: *Bi and multi-lateral agreements between EU member states and third countries will allow governments to ship asylum seekers to any country in the world deemed “safe.” This provision does not even specify that the receiving country offers “effective protection,” only that STC governments “examine” requests for protection (European Parliament, 2026). This requirement does not specify how countries should evaluate these claims and does not impose a standard definition of refugee status eligibility—as this definition is enshrined in international law only through the 1951 Convention and its 1967 Protocol, conventions that STCs are not required to be party to.*

This provision is perhaps the most jarring, as member states do not have to make any case for why the asylum seeker would be able to survive and receive protection in the STC. The vast majority of asylum seekers could fall under this category—even in the absence of prior transit or a “meaningful” link—should EU member states sign more deals with STCs. A particularly worrisome example of this policy emerged in the U.S. in 2025, when multiple Southeast Asian and Latin American immigrants accused of violent crimes were sent to Djibouti and then South Sudan (Montoya-Galvez, 2025). The men were immediately placed in detention and under the care of domestic authorities. Prison systems in Djibouti and South Sudan have documented records of human rights abuses, and South Sudan is on the brink of civil conflict and under travel risk advisories by both the EU and the U.S. None of the men had ties to either of the two countries or spoke any of the regional languages, preventing them from advocating for themselves.

[1] This is a hypothetical agreement that does not currently exist between Spain and Turkey but that resembles other precedents.

KEY DEFINITIONS

Asylum Seeker

A person who applied for international protection in another country but whose claim has not yet been decided.

Asylum Procedure Regulation (APR)

A regulation under the EU Pact which standardizes how asylum applications are processed across member states.

Border Externalization

When countries shift migration control beyond their own state's borders

Burden-Sharing

The idea of sharing the responsibility for hosting and processing asylum seekers evenly across countries.

Chain Refoulement

The return of an asylum seeker to danger through a third country which later sends them to an unsafe place.

Common European Asylum System (CEAS)

EU framework coordinating asylum policies across member states.

Dublin Regulation

An EU policy stating the first member state an asylum seeker enters is responsible for processing their claim.

Due Process

Legal rights ensuring fair treatment, including the right to appeal decisions and access courts.

EU Pact on Migration and Asylum (“the Pact”)

Expected 2026 major reform package aimed at creating a unified EU migration system, especially concerning stricter controls and expanded use of Safe Third Countries.

EURODAC

An EU biometric database used to track asylum seekers' data, (I.e. fingerprints)

Fortress Europe

A colloquial term used to describe the EU's increasingly restrictive and security-focused migration policies.

Meaningful Link (or Connection)

A requirement in which an asylum seeker must have a real connection (e.g., family, residence) to a third country before being sent there.

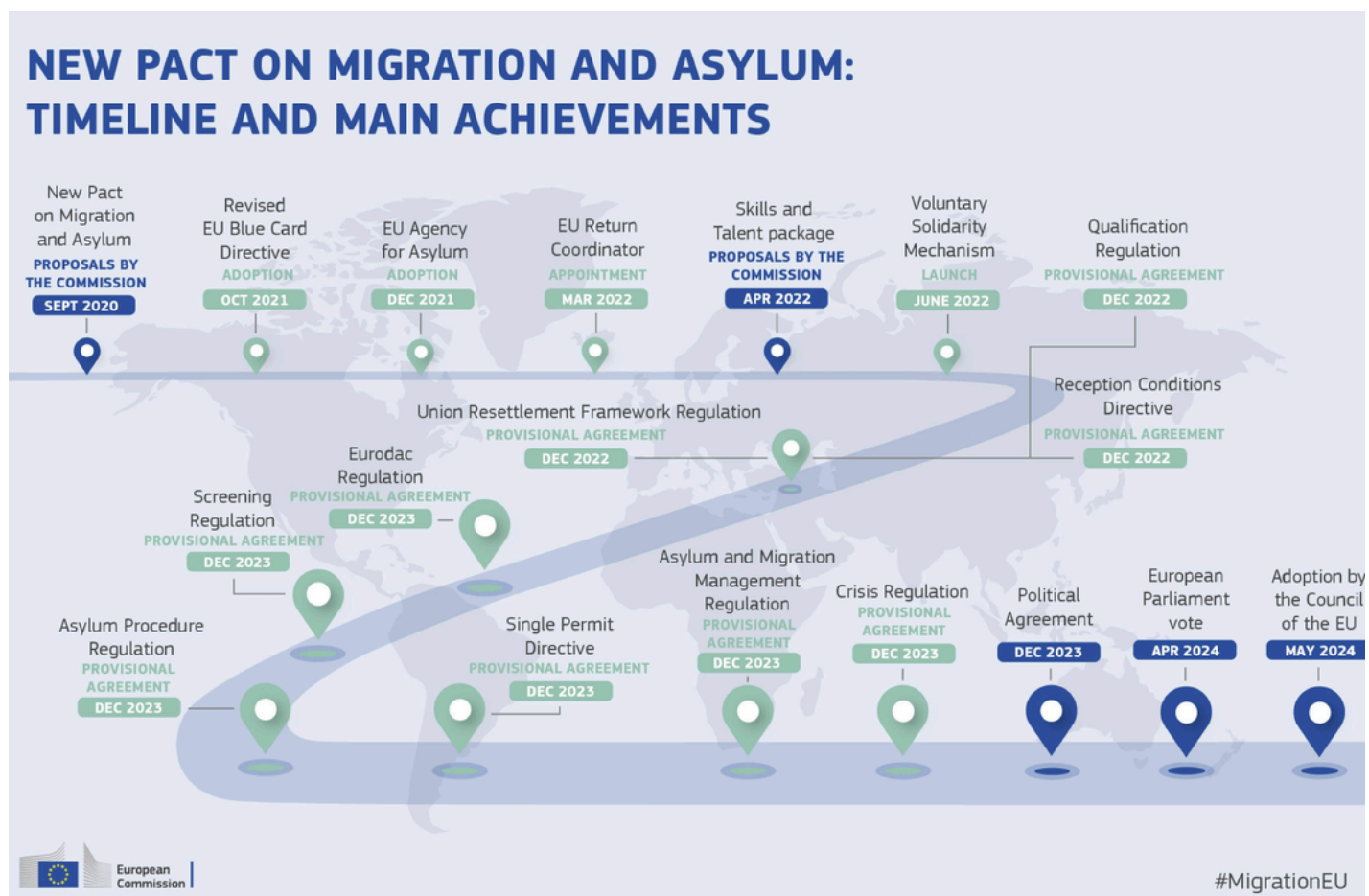
Non-Refoulement

A principle of international law that prohibits returning someone to a country where they could potentially face persecution, torture, or serious harm.

Refoulement

The act of forcibly returning someone to a country where they could face danger or persecution.

TIMELINE



Source: European Commission

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