AN UNSAFE PLAN

Comments on the Commission proposal for an EU list of safe countries of origin

PRO ASYL
DER EINZELFALL ZÄHLT.

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Published: May 2025

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1. EU law rules for SCO designation must be strictly interpreted since SCO is "a special examination scheme that is exceptional in nature", in view of its extensive negative procedural consequences for asylum seekers (CJEU, C-406/22, C-404/17). These may breach the *non-refoulement* principle and the right to an effective remedy (ECtHR, *S.H. v. Malta, E.F. v. France*).

2. Article 61 APR rules for SCO designation must be construed in line with primary EU law standards, including all "relevant treaties" on international refugee law and human rights (CJEU, C-608/22, C-646/21, C-621/21).

3. Designation of SCO must be preceded by a "thorough examination" of the situation in the country based on reliable, up-to-date sources (ECtHR, *Ilias & Ahmed v. Hungary*). Sources must be disclosed to enable review of the legality of the designation (CJEU, C-406/22).

4. The existence of a "democratic system" with well-functioning institutions and respect for the rights of minori ties is a prerequisite to SCO designation (CJEU, AG Opinion C-758/24).

5. The situation of specific, clearly identifiable groups in a country should be thoroughly assessed at the SCO designation stage. The existence of several categories of specific groups, including not clearly identifiable categories, facing risks in the country points to general deficiencies that preclude its designation as SCO (CJEU, AG Opinion C-758/24).

6. The SCO proposal flouts rules laid down in primary EU law and Article 61 APR on SCO designation. The Commission has disclosed neither the sources consulted, nor the assessment it has performed prior to the proposed designation.

7. The succinct information contained in the SCO proposal often leads to opposite conclusions to those reached by the Commission, pointing to pervasive, widespread breaches of human rights and ineffective democratic institutions.

8. The SCO proposal defeats *effet utile* by unduly conflating SCO with the "20% rate" ground for accelerated procedures, even though the two are envisioned as separate grounds under Article 42 APR.

9. Recourse to EU-wide recognition rates as an indicator of fulfilment of the SCO criteria disregards (i) concerns as to the reliability of Eurostat data, where "rejections" are not limited to negative decisions on the merits; (ii) imbalanced representation of decision-making, as rates are often determined by a handful of Member States with the largest caseload on a particular nationality, regardless of decision-making quality. This is particularly evident in the case of countries such as Türkiye.

10. The automatic designation of EU candidate countries as SCO is in clear dereliction of the duty to perform a thorough assessment of their compliance with the Article 61 APR criteria. It also undermines policies such as the Enlargement Policy, the Rule of Law Mechanism, and the application of the ECHR and execution of judgments at Council of Europe level.

11. Exceptions to automatic designation of EU candidate countries as SCO are ambiguous and at times circular: (a) the EU has no competence to determine the existence of a situation falling within the scope of Article 15 QR; (b) linking SCO designation with the EU sanctions regime permits foreign policy inroads into the legal assessment of SCO criteria and undermines clarity and legal certainty; (c) the reference to the "20% rate" exacerbates overlap between two separate acceleration grounds under the APR.

12. Disaggregated statistics on negative asylum decisions by type and ground of rejection (unfounded, manifestly unfounded, inadmissible) are imperative for a sound understanding of European asylum procedures and should be collected at EU level.

PRO ASYL opposes the SCO concept and urges co-legislators to reject the SCO proposal in its entirety, since the Commission has failed to observe binding EU law rules on the designation of SCO and to respect the principles of legal certainty and *effet utile* that are essential to good law-making.

Should the Council and European Parliament wish to pursue this proposal, negotiations should not start before the Commission has complied with its legal obligation to publicly disclose the full set of sources it has consulted and the assessment thereof it has performed.

LIST OF ABBREVIATIONS

AG	Advocate General
APR	Asylum Procedures Regulation (EU) 2024/1348
CAT	United Nations Committee against Torture
CEDAW	United Nations Committee on the Elimination of Discrimination against Women
CERD	United Nations Committee on the Elimination of Racial Discrimination
CJEU	Court of Justice of the European Union
CSO	Civil society organisation
CRPD	United Nations Committee on the Rights of Persons with Disabilities
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
ECtHR	European Court of Human Rights
EEAS	European External Action Service
EU	European Union
EUAA	European Union Agency for Asylum
ICCPR	International Covenant on Civil and Political Rights
LGBTI	Lesbian, gay, bisexual, transgender and intersex
OJ	Official Journal of the European Union
QR	Qualification Regulation (EU) 2024/1347
RSA	Refugee Support Aegean
SCO	Safe country of origin
STC	Safe third country
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
UNHCR	United Nations High Commissioner for Refugees

INTRODUCTION*

On 16 April 2025, the European Commission tabled a proposal amending the Asylum Procedures Regulation (APR),[1] aimed predominantly at designation of "safe countries of origin" (SCO) at European Union (EU) level.[2]

SCO entails a presumption that nationals of a country designated as safe under EU law criteria are not at risk of facing persecution or serious harm, and more onerous a burden of proof on the individual applicant to demonstrate otherwise.[3] The Preamble to the APR makes express reference to the "need to strengthen the application of the safe country of origin concept as an essential tool to support the swift examination of applications that are likely to be unfounded".[4]

The Court of Justice of the European Union (CJEU) has consistently held that the SCO concept introduces a "special examination scheme that is exceptional in nature" and should therefore be narrowly interpreted. That is given that the application of the concept brings about a severe reduction of procedural safeguards against refoulement for the individual applicant, through the:

- Mandatory examination of the claim under an accelerated procedure;
- Optional application of the claim under a border procedure;[6]
- Possibility to declare the claim manifestly unfounded;[7]
- Shorter deadlines to appeal a negative decision and corollary removal order;[8]
- Absence of automatic suspensive effect of the appeal against the negative decision and corollary removal order.[10]

The combined effect of the procedural consequences stemming from the SCO concept under the APR in fact fails to observe the minimum requirements of the principle of non-refoulement and the right to an effective remedy, as interpreted in the jurisprudence of the European Court of Human Rights (ECtHR) and the CJEU.[11] These human rights standards are also enshrined in the Charter of Fundamental Rights (hereafter "Charter")[12] and have primacy over any contrary provision in EU legislative acts.

SCO is a long-contested concept, regularly litigated before the courts.[13] Contestation before national jurisdictions often leads to findings of deficiencies in the way states designate SCO and proceed to presume that nationals thereof do not qualify for international protection. The EU-level SCO designation put forward by the proposal, however, would take the form of a Regulation directly applicable in the legal orders of the Member States and amenable to review only before the CJEU, under narrow admissibility rules.[14]

In light of these considerations, the Council and European Parliament should approach any proposal for designation of SCO at EU level with particular caution and perform anxious scrutiny of the legality and feasibility of the measures proposed by the Commission.

This particular SCO proposal regrettably marks a continued deterioration in the quality of the EU law-making process, to the detriment of both people seeking refuge in Europe and national systems designed to protect them. The Commission has yet again flouted EU good law-making standards,

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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 (APR), OJ L 22.5.2024. The Regulation will not enter into application until 12 June 2026: Article 79 APR.

2 European Commission, *Proposal amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level* (hereafter "SCO proposal"), COM(2025) 186, 16 April 2025.

3 Article 61 APR.

4 Recital 79 APR.

5 CJEU, C-406/22 *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, 4 October 2024, paras 47 and 70-71; C-404/17 A, 25 July 2018, para 25.

6 Article 42(1)(e) and (3)(a) APR.

7 Article 44(1)(b) APR.

8 Article 39(4) APR.

9 Article 68(7)(a) APR.

10 Article 68(3)(a) APR. Note also Article 28(2) of the Return Regulation proposal, COM(2025) 101.

11 ECtHR, *S.H. v. Malta*, App No 37241/21, 20 December 2022, paras 90-93; *E.H. v. France*, App No 39126/12, 22 July 2021, paras 181-184 and cited case law; CJEU, C-156/23 Ararat, 22 November 2024, para 48; C-233/19 *CPAS de Liège*, 30 September 2020, para 45 C-181/16 *Gnandi*, 19 June 2018, para 54.

12 Namely Articles 4, 19(2) and 47 Charter.

13 ECRE, *"Safe countries of origin": A safe concept?*, September 2015, available here; Cathryn Costello, 'Safe Country? Says Who?' (2016) 28:4 International Journal of Refugee Law 601.

14 UNHCR, *Comments on the European Commission proposal for an Asylum Procedures Regulation*, April 2019, 45, available here; ECRE, *Comments on the Asylum Procedure Regulation*, November 2024, 103, available here.

15 Recital 82 APR.

16 European Commission, *Commission work programme 2025*, COM(2025) 45, 11 February 2025.

17 SCO proposal, Explanatory Memorandum, 15 only cites a 16 December 2024 letter of the President of the Commission to the EU Asylum Agency (EUAA) and the 19 December 2024 European Council Conclusions. It further states that "Consultations took place at the highest level", without giving any additional context or explanation.

18 In 2024, the Commission made related recommendations to at least nine countries (Germany, Greece, Estonia, Cyprus, Luxembourg, Malta, Portugal, Romania, Slovakia): European Commission, *Annex to the 2024 Rule of Law Report*, COM(2024) 800 ANNEX, 24 July 2024.

expressly cited in the Preamble to the APR.[15] It has namely: (i) failed to announce the SCO proposal in its 2025 Work Programme;[16] (ii) forgone a public consultation prior to releasing the proposal;[17] and (iii) failed to deliver an impact assessment on the proposed reform. Persisting contempt for the legislative process on the part of the Commission has tangible negative effects beyond poor quality of proposed – and likely hastily adopted – EU rules. It undercuts the EU's sustained efforts to encourage rule of law compliance in the Member States under its Rule of Law Mechanism and the credibility of the Commission's recommendations to national governments to promote thorough, consultative and quality approaches to domestic law-making.[18]

This PRO ASYL comments paper offers an analysis of the main legal concerns surrounding the SCO proposal, pointing to a flawed overall approach to EU law-making. We do not delve into an assessment of the safety of the individual countries proposed for designation as SCO at EU level.

We oppose the SCO concept and urge co-legislators to reject the SCO proposal in its entirety, since the Commission has failed to observe binding EU law rules on the designation of SCO and to respect fundamental principles of legal certainty and *effet utile*, as detailed in our analysis.

Should co-legislators pursue the proposal, negotiations should not start before the Commission has publicly disclosed the full set of sources consulted and the assessment thereof it performed for the purpose of proposing designation of the countries concerned as SCO. This would be a necessary, minimum precondition for the Council and European Parliament to diligently perform their legislative functions in line with the Treaties.

ANALYSIS OF KEY PROVISIONS

RULES UNDERLYING THE DESIGNATION OF SCO AT EU LEVEL

The requirements and methodology for the designation of a country as a SCO are set out in Article 61(1)-(4) APR. On the one hand, the criteria and procedural rules set out therein must be construed in accordance with primary EU law and in particular Article 78(1) TFEU. This means that the methodology rules for designating SCO should be informed by standards set by international refugee and human rights law instruments. The CJEU clarifies that such a duty extends to all "relevant treaties", including the Council of Europe Convention on Preventing and Combating Violence Against Women ("Istanbul Convention") and the United Nations Convention on Elimination of All Forms of Discrimination against Women. [19] On the other hand, the SCO designation rules under Article 61 APR must be subject to a "strict interpretation" given that the SCO concept entails "a special examination scheme that is exceptional in nature". [20]

The process of SCO designation must thereby abide by a number of fundamental safeguards and constraints, analysed in detail below.

Requisite democratic system & functioning institutions

Article 61(1) APR provides that designation of a country as a SCO is conditioned on establishing that there is no persecution or risk of serious harm in the meaning of Articles 9 and 15 of the Qualification Regulation (QR), [21] "on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances". The terms "application of the law within a democratic system" delineate a mandatory democratic framework within which the practice of a country should be assessed based on available information, in clear conjunction with the functioning of that country's institutions entrusted with applying domestic law and courts responsible for offering protection against violations and sanctioning perpetrators thereof. [22]

As recently highted by the Advocate General of the CJEU, the designation of a SCO is conditioned upon the finding that the legal and political situation of the country concerned amounts to a democratic system under which the population generally enjoys protection against persecution and serious harm. 23

For its part, Article 61(4) APR clarifies that the assessment of the absence of persecution or risk of serious harm must consider inter alia whether protection against such acts is offered against the following indicators: legislation and its practical application; compliance with European Convention on Human Rights (ECHR) and International Covenant on Civil and Political Rights (ICCPR) provisions; absence of refoulement; system of effective remedies against human rights violations. Fulfilment of those conditions in the country concerned should be assessed in the context of a "thorough examination", according to non-refoulement standards set by jurisprudence. [24]

Assessment of authoritative, up-to-date sources on the country of origin

Article 61(3) APR states that the assessment of SCO criteria "shall be based on a range of relevant and available sources of information" and shall take into account any available common analysis prepared by the EUAA. The provision lists Member States, the EUAA, the European External Action Service (EEAS), the United Nations High Commissioner for Refugees (UNHCR) and "other relevant international organisations" as indicative sources of such information. On correct reading of the provision in line with the principle of *non-refoulement*, [25] authoritative reports "notably of the UNHCR, Council of Europe and EU bodies are in principle considered to have been known". [26] The same applies to reports by non-EU governments and by independent human rights organisations. 27 Failure to consider such sources must be reasoned, according to domestic case law. [28] The above obligation undoubtedly encompasses a duty to consider up-to-date information on the current state of the country concerned. [29]

19 CJEU, C-608/22 *Bundesamt für Fremdenwesen und Asyl*, 4 October 2024, para 33; C-646/21 *Staatssecretaris van Justitie en Veiligheid*, 11 June 2024, para 36; C-621/21 *Intervyuirasht organ na DAB pri MS*, 16 January 2024, paras 37 and 44-47.

20 CJEU, C-406/22 *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, 4 October 2024, paras 70-71.

21 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, OJ L 22.5.2024.

22 Recital 80 APR: "whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in that country."

23 CJEU, C-758/24 *Alace*, Opinion, 10 April 2025, para 90.

24 *Mutatis mutandis*, ECtHR, *Ilias and Ahmed v. Hungary*, App No 47287/15, 21 November 2019, para 137.

25 Namely, Articles 4 and 19(2) Charter; Article 3 ECHR; Article 7 ICCPR; Article 3 CAT.

26 ECtHR, *Ilias and Ahmed v. Hungary*, App No 47287/15, 21 November 2019, para 141; *F.G. v. Sweden*, App No, 43611/11, 23 March 2016, para 126; *M.S.S. v. Belgium and Greece*, App No 30696/09, 21 January 2011, paras 346-350.

27 ECtHR, *Saadi v. Italy*, App No 37201/06, 28 February 2008, para 131.

28 (Netherlands) Council of State, No 202002809/1/V2, 7 April 2021, para 17.2, available here.

29 *Mutatis mutandis*, Article 34(2)(b) and Recital 38 APR. Note also CJEU, C-125/22 *Staatssecretaris van Justitie en Veiligheid*, 9 November 2023, para 47; C-756/21 *International Protection Appeals Tribunal*, 29 June 2023, para 48.

Assessment of risks faced by specific groups in the country of origin

The possibility afforded by Article 61(2) APR for designation of SCO at EU and national level subject to exceptions for specific parts of the territory of clearly identifiable categories of persons merits particular consideration in light of the primary law duty to construe the Regulation in accordance with relevant human rights treaties. The choice of the EU legislature to explicitly foresee such a possibility implies an admission that certain groups of people e.g. women, LGBTI persons, disabled persons, political dissidents, religious minorities may face persecution or serious harm on account of their particular characteristics. It equally implies that the predicament of specific, clearly identifiable groups should be thoroughly addressed in the process of designation of SCO at EU level. [30]

Regrettably, and incorrectly, the SCO proposal refers to this obligation only in respect to the application of the SCO context at national level. Specifically, Recital 17 of the proposal states that in the application of the concept by Member States, "special attention should be paid to applicants who are in a specific situation in those countries, such as LGBTIQ persons, victims of gender-based violence, human rights defenders, religious minorities and journalists."

Yet, the duty to observe the risks affecting particular categories of people is binding at the level of both SCO designation and application, on correct reading of Articles 61-62 APR in line with Article 78(1) TFEU and corollary human rights treaties. Therefore, formal identification – and exclusion – of groups that would be at risk despite a general assessment of the situation in the country concerned is necessary to ensure the effet utile of the SCO concept, on the one hand. [11] Sources consulted for the purpose of designating SCO should thus include reports on the situation of clearly identifiable particular groups of people, not least those produced in the context of periodic monitoring of countries by United Nations Treaty bodies such as the Committee on Elimination of Discrimination Against Women (CEDAW), the Committee on Elimination of Racial Discrimination (CERD), the Committee on the Rights of Persons with Disabilities (CRPD) and others.

The Advocate General of the CJEU stresses that, in light of the principle of proportionality, the existence of a significant number of categories of persons exempted from the SCO designation, including categories that may not be immediately identifiable, would in fact reveal general and systemic deficiencies that should preclude the overall designation of the country concerned as a SCO. [32]

In a similar vein, national jurisdictions have noted that designation of a SCO subject to exceptions of specific groups is impermissible where persecution is found to be widespread and constant, as this would run counter to both the right to dignity under Article 1 of the Charter and the requirement for SCO to abide by the rule of law, an essential part of which is respect for the rights of minorities. This interpretation should be read in the light of Article 61(1) APR which requires SCO criteria to be assessed against the "application of the law within a democratic system" in the country concerned.

On the other hand, the mere reference in Recital 17 of the SCO proposal to "special attention" paid to the specific situation of certain applicants without any clarification of the exact procedural effects of such "attention" on the treatment of their claims leaves an impermissible lack of clarity in the asylum process, as highlighted by case law at domestic level. [34]

Accessibility of the assessment of sources on the country of origin

The legality of the designation of a country as a SCO constitutes a point of law that must be reviewable ex officio, per recent CJEU case law. [35] Therefore, the sources consulted pursuant to Articles 61(3) and 62(3) APR for the purpose of designating a SCO at EU level should be accessible, not least with a view to rendering such review possible, to ensuring consistency in decision-making, [36] and to respecting asylum seekers' right under Article 8(5) APR to have access to any information relied upon by the determining authority for the purpose of deciding on their claim. [37]

Hence, recommendations from UNHCR have highlighted the need for documentation consulted for the purpose of SCO designations to be publicly available. [38] Existing practice in countries such as Greece already shows that these requirements are flouted at national level, as authorities refuse to make this information available to asylum seekers even upon request. [39]

30 *Mutatis mutandis*, (France) Council of State, No 437141, 2 July 2021, para 12, available here; (Netherlands) Council of State, No 202002809/1/V2, 7 April 2021, para 26.

31 CJEU, C-758/24 *Alace*, Opinion, 10 April 2025, paras 87-89. Note also the pending references C-388/24 *Oguta*; C-750/24 *Ortera*; C-763/24 *Mibone*.

32 *Ibid*, paras 92-94.

33 (Italy) Court of Cassation, No 34898/2024, 30 December 2024, paras 17-18, available here. Note also (Netherlands) Council of State, No 202002809/1/V2, 7 April 2021, para 20.

34 (Netherlands) Council of State, No 202101901/1/V2, 5 April 2022, paras 7-8, available here.

35 CJEU, C-406/22 *Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky*, 4 October 2024, paras 90-95 and 98.

36 CJEU, C-758/24 *Alace*, Opinion, 10 April 2025, paras 48-65.

37 *Mutatis mutandis*, European Commission, Reply to written question E-3532/2021, 4 October 2021, available here.

38 UNHCR, *Comments on the European Commission proposal for an Asylum Procedures Regulation*, April 2019, 44.

39 Zacharoula Katsigianni & Eleni Koutsouraki, 'Safe Third Countries and Safe Countries of Origin: Safety Assessment and Implementation for Refugees Seeking Protection in Greece' (2025) 64:1 Quarterly on Refugee Problems 22, 34.

UNLAWFUL & DEFICIENT DESIGNATION OF SCO AT EU LEVEL

The SCO proposal designates a total of 16 countries as SCO at EU level through two separate provisions:

- **Article 1(3)** inserts **Annex II APR** which lists seven countries as SCO: Bangladesh; Colombia; Egypt; India; Kosovo; Morocco; and Tunisia.

- **Article 1(1)(a)** proposes an amendment to **Article 62(1) APR**, providing in principle for automatic designation of candidate countries as SCO, currently covering nine countries: Albania; Bosnia and Herzegovina; Georgia; Moldova; Montenegro; North Macedonia; Serbia; Türkiye; and Ukraine.

Failure to observe SCO designation rules

The reasoning behind the proposed designation of Bangladesh, Colombia, Egypt, India, Kosovo, Morocco and Tunisia as SCO at EU level appears to be succinctly provided in standardised format in Recitals 7-13 and 16 of the SCO proposal, as well as in slightly more detailed passages of its Explanatory Memorandum. These, however, fall far short of the procedural requirements set by both primary EU law and Article 61 APR for designating SCO at EU level.

- Failure to cite consulted sources and to demonstrate thorough assessment of evidence

The Commission motivates its proposed designation the seven countries listed in **Annex II APR** as SCO solely based on unpublished "information from the Asylum Agency".[40] In no way, however, does the submission of information by the EUAA to the Commission in accordance with **Article 62(3) APR** discharge the EU legislature's under **Article 61(3) APR** to demonstrate that the designation of SCO at EU level has been preceded by a thorough assessment of reliable sources and to disclose those sources.

At the same time, even the succinct information contained in the SCO proposal seems lead to conclusions opposite to those reached by the Commission as regards the safety of countries it seeks to designate as SCO.

The Commission's omission of the sources consulted and of its assessment thereof has crucial impact on the integrity and quality of the legislative process that ensues the presentation of the SCO proposal. It means that co-legislators currently lack the necessary evidence to review whether the Commission's proposed designation of SCO is in fact supported by available country of origin information, prior to approving such designation in the APR. We recall that the EU-level designation of SCO will take the form of a Regulation, only amenable to review before the CJEU.

An indicative example of the flawed approach adopted by the proposal may be found in the case of the proposed designation of Egypt. The SCO proposal explicitly states that:[41]

1. the state of emergency continues to apply in "areas in the Sinai";

2. "authorities continue to use emergency and military courts to prosecute individuals under broad provisions of counter-terrorism legislation and other laws";

3. "certain religious affiliates may face discrimination in practice";
4. "Human rights defenders, political activists and opponents may face arbitrary arrest and torture, and may be targeted with measures such as travel restrictions and asset freezes";

5. "the situation of the LGBTIQ remains a challenge";

6. "Human rights challenges in Egypt remain significant, particularly in relation to the protection of fundamental freedoms, governance and the rule of law";

7. "Egypt retains the death penalty under the Penal Code and military laws, which in certain cases is applied in practice".

The proposal itself therefore concedes the existence of serious, pervasive concerns around the country's (i) compliance with the requirements of a well-functioning democratic system, (ii) respect for human rights, including the non-derogable rights set out in Articles 2 and 4 of the Charter, and (iii) a well-functioning justice system to afford protection against violations. The Commission's own admissions directly contradict its conclusion that "the population of Egypt does not, in general, face persecution or real risk of serious harm".

Furthermore, the passages of the Explanatory Memorandum to the SCO proposal referring to Egypt fail to make any reference to persisting acute risks for women, not least the "widespread incidence of gender-based violence, in particular domestic and sexual violence against women and girls", the "leniency for so-called 'honour crimes'" in the Penal Code, the "low number of prosecutions and convictions", and the fact

40 Recitals 7-13 SCO proposal.

41 SCO proposal, Explanatory Memorandum, 9-10. Less detailed reference is made to Recital 10 SCO proposal.

that female genital mutilation remains" sprevalent in most communities in the country", as recently highlighted by the United Nations Committee against Torture (CAT), the Human Rights Committee and CEDAW.[42] These authoritative sources are in principle considered to be known and form part of essential evidence that should be consulted prior to SCO designation. They should also be given due weight given the duty to construe Article 61(3) APR in line with the United Nations Convention on Elimination of All Forms of Discrimination against Women and the Istanbul Convention, as discussed in Rules on SCO Designation.

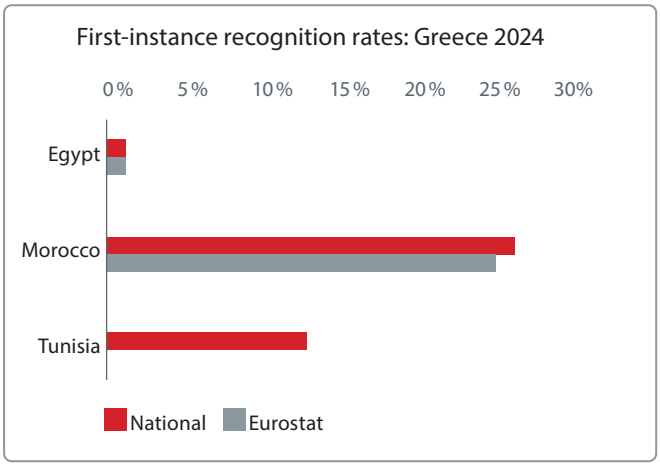
- Opaque, circular reliance on recognition rates

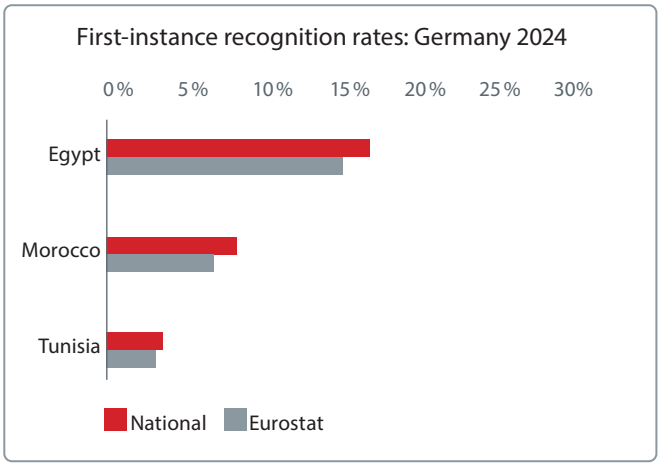
The SCO proposal makes various references to "the EU-wide recognition rate" without specifying the exact manner in which the rates in question are calculated. It may only be assumed based on the more prescriptive wording of Article 1(1)(a) of the proposal that the Commission follows the method indicated in **Article 42(1)(j) APR** concerning the newly introduced "20% rate" ground for applying the accelerated procedure: an average recognition rate calculated based on the latest available annual Eurostat statistics on decisions taken by the determining authority at first instance.

Elsewhere, the SCO proposal states that the use of recognition rates offers "more objective and easy-to-use criteria" and "an objective, verifiable and strong indicator regarding the likelihood of someone's need for protection".[43]

On the one hand, recourse to this indicator disregards longstanding concerns about the accuracy and reliability of recognition rates calculated based on Eurostat data. These highlight in particular that "rejections" in the Eurostat database are not limited to negative decisions on the merits of asylum applications and extend to inadmissibility decisions that are unrelated to "someone's need for protection".[44] Due to this, Eurostat recognition rates are usually lower than the real number of nationals of a particular country found to be in need of international protection.

The disparity between Eurostat recognition rates and actual rates of granted applications following an assessment of the merits may reach significant degrees in some cases. To illustrate, recognition rates at first instance in Greece and Germany in 2024 were as follows for selected countries of origin among those designated in the SCO proposal:





Sources: Eurostat, migr_asydcfsta; BAMF, Asylstatistik 2024, here; Greek Asylum Service, Reply to parliamentary question, 10 Mar 2025, here

These disparities are only expected to grow after the start of applicability of the APR in June 2026, as the Regulation brings about an expansion of possibilities to dismiss asylum claims without an assessment on the merits through additional inadmissibility grounds[45] and mandatory dismissal of broadly defined subsequent applications.[46]

The need for EU-wide disaggregation of statistics on negative asylum decisions by type of rejection (e.g. inadmissible, unfounded, manifestly unfounded) is reflected in the mandatory pilot studies provisions introduced in the 2020 amendment to the Migration Statistics Regulation.[47] The Commission has

42 CAT, *Concluding observations on the fifth periodic report of Egypt, CAT/C/EGY/CO/5*, 12 December 2023, paras 49 and 51, available here; Human Rights Committee, *Concluding observations on the fifth periodic report of Egypt*, CCPR/C/EGY/CO/5, 14 April 2023, para 15, available here; CEDAW, *Concluding observations on the combined eighth to tenth periodic reports of Egypt*, CEDAW/C/EGY/CO/8-10, 26 November 2021, para 23, available here.

43 SCO proposal, Explanatory Memorandum, 16.

44 ECRE, *Asylum Statistics and the Need for Protection in Europe*, December 2022, available here; *Comments on the reform of the Migration Statistics Regulation*, June 2018, available here.

45 Article 38(1)(e) APR.

46 Articles 3(9) and 38(2) APR.

47 Article 9a(3)(c)(i) Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection ("Migration Statistics Regulation") OJ L 199/23, inserted by Article 1(9) Regulation (EU) 2020/851, OJ L 198/1.

yet to propose a pilot study on this topic.[48] Collection and disclosure of disaggregated statistics on negative asylum decisions by type and ground of rejection – unfounded, manifestly unfounded and inadmissible – is imperative to a sound understanding of the functioning of European asylum systems and to policy-making in the areas addressed by the present proposal. It should therefore be rendered mandatory at EU level. This could be secured through a dedicated provision in the APR on statistics or through an amendment to the Migration Statistics Regulation.

On the other hand, it need be reminded that the APR envisions the SCO concept as a separate acceleration ground to the "20% rate" ground, covering cases of asylum seekers originating from a country for which the average recognition rate under annual Eurostat data is 20% or lower.[49] The SCO proposal's attempt at conflation of the two acceleration grounds defeats the effet utile of the provisions of the Regulation and should be resisted.

The proposal also appears to espouse a circular logic, whereby low recognition rates in Member States' decision-making substantiate per se the designation of a country as SCO, leading in turn to low recognition rates in the treatment of applications by its nationals. That much may be inferred by the Commission's express use of the terms "as evidenced by the low EU-wide recognition rate" in its conclusions on all seven SCO designations.[50]

The pitfalls of the Commission's reliance on average EU-wide recognition rates as an "objective, verifiable and strong indicator" for SCO designations at EU level are all the more concerning, considering that the EU average rate does not fairly represent disparities in Member States' decision-making. The average is rather determined by the Member States with the largest caseload on a particular country of origin, regardless of quality of their decision-making. This can lead to an imbalanced, unfair depiction of actual protection needs, in light of persisting "high variations" in decision-making across the Member States.[51]

In the aforementioned case of Egypt, for example, more than ¾ of the sum of first instance decisions issued in 2024 were taken in two Member States alone: Italy and Greece. Decision-making in these two countries points to a recognition rate of 1.4% and 1.3% respectively. Yet, the first-instance recognition rate for the same country of origin was 35.3% in the Netherlands, 33.3% in Ireland, 19% in Sweden, 15.8% in Belgium, 14.8% in Germany and 12.3% in France.[52]

Impermissible automatic designation of EU candidate countries as SCO

The SCO proposal introduces a new Article 62(1) APR, per which "The countries that have been granted the status of candidate states for accession to the Union are designated as safe countries of origin at Union level", unless certain exceptions apply. The Exceptions are discussed below.

The Commission deems that the decision to grant EU candidate status to a country, however old or recent, suffices for its designation as SCO on the ground that "the EU candidate countries were found to have advanced towards reaching the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities".[53]

The automatic designation of EU candidate countries as SCO is in direct dereliction of the EU legislature's unequivocal obligation to perform a "thorough examination" of the situation prevailing in these countries on the basis of up-to-date, reliable sources of information, as required by the principle of non-refoulement and prescribed by Article 61(1), (3) and (4) APR.

It also undermines the effectiveness of EU policies beyond the realm of the CEAS, namely Enlargement Policy and the Rule of Law Mechanism, contrary to opposite suggestions in the SCO proposal.[54] Reports of the European Commission itself cite general, pervasive deficiencies in candidate countries that are of direct relevance to the assessment of their compliance with the Article 61 APR criteria and may in fact militate against their designation as SCO. For example:

- Accession negotiations with Türkiye remain "at a standstill since 2018" and the country "did not reserve the negative trend of continued deterioration of democratic standards noted in the past years. The EU's serious concerns in the areas of fundamental rights and the rule of law, including the independence of the judiciary, remain".[55] The 2024 Enlargement Report on Türkiye notes, among a range of concerns, that the Parliament "lacks the tools needed to hold the government to account", that the "government's pressure on mayors from opposition parties continued to weaken local democracy", that "Civil society organisations (CSOs) in Türkiye operate in a difficult environment facing shrinking space to operate and multiple constraints", that "the fundamental shortcomings in the functioning of the judiciary remained unaddressed. Türkiye continued to refuse to implement certain judgments of the European Court of Human Rights

48 European Commission, *Staff Working Document on the progress made regarding the pilot studies referred to in Article 9a of Regulation s*, SWD(2024) 199, 25 July 2024.

49 Article 42 and Recital 56 APR. The latter is to apply earlier than 12 June 2026, per Article 1(2)(b) of the SCO proposal.

50 SCO proposal, Explanatory Memorandum, 4.

51 RSA, *New Pact on Migration and Asylum: Impermissible regression of standards for asylum seekers*, July 2024, 24, available here.

52 Eurostat, migr_asydcfsta: Out of a total of 14,540 first instance decisions, Italy accounted for 6,995 and Greece for 4,355.

53 SCO proposal, Explanatory Memorandum, 5, 7, 9, 10, 11, 12, 13.

54 SCO proposal, Explanatory Memorandum, 13.

55 European Commission, *2024 Communication on EU enlargement policy*, COM(2024) 690, 30 October 2024, 2-3.

(ECtHR). Undue pressure by the authorities on judges and prosecutors continued to have a negative effect on the independence and quality of the judiciary", that the "overall human rights situation in the country has not improved and remains an issue of concern" as "Trials and convictions of journalists, writers, lawyers, academics, human rights defenders and other critical voices for alleged support for terrorism have continued", that "The legislation and the institutional framework in Türkiye is not aligned with EU legislation and international standards" in the area of gender equality and that Türkiye maintains its withdrawal from the Istanbul Convention. [56]

- The 2024 Rule of Law Report on North Macedonia states, among others, that "the independence of the judiciary and the institutional capacity to protect it against undue influence remain a serious concern. The level of perceived judicial independence is very low. Concerns also remain regarding the functioning and independence of the Judicial Council, while steps have been taken in this respect". [57]

The automatic designation of EU candidate countries as SCO also undermines the effectiveness of the ECHR, which forms a general principle of EU law and to which the EU is seeking accession pursuant to Article 6 TEU. Several EU candidate countries face an array of ECtHR condemnation judgments still pending execution before the Committee of Ministers of the Council of Europe. In the case of Türkiye, these cover a wide range of systemic human rights concerns under enhanced supervision, ranging from the right to a fair trial and the right to liberty, to freedom of religion, freedom of expression, the right to life and the prohibition on torture. [58]

Ambiguous, circular rules on exceptions from automatic designation

The proposed new Article **62(1) APR** provides that an EU candidate country is not designated as SCO at EU level where one of the following circumstances apply:[59]

(a) "there is a serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict in the country", i.e. a situation under **Article 15(c) QR**; [60]

(b) "restrictive measures within the meaning of Title IV of Part Five of the Treaty on the Functioning of the European Union have been adopted in view of the country's actions";

(c) "the proportion of decisions by the determining authority granting international protection to the applicants from the country - either its nationals or former habitual residents in case of stateless persons – is higher than 20% according to the latest available yearly Union-wide average Eurostat data"

These exceptions raise significant concerns as regards clarity, legal certainty and practical feasibility. Particular attention is drawn to the exceptions under points (a) and (c) as follows:

- The Article 15(c) QR exception

Ascertaining the existence of a situation falling within the scope of Article 15(c) QR a fortiori involves an examination of the merits of the individual claim. That is given that the concept of "serious harm" as defined in Article 15 QR requires consideration of both the general situation in the country of origin and the individual position and personal circumstances of the applicant. According to constant CJEU case law, whereas certain exceptional situations of indiscriminate violence may per se lead to a finding of a risk of a "serious and individual threat", other, lower levels of violence may meet the threshold of such a threat for specifically affected individuals. [61]

The assessment of whether a situation of violence falls within the scope of Article 15(c) QR therefore cannot be established in abstracto, without an individualised examination of the personal characteristics of a particular applicant against the level of indiscriminate violence prevailing in the country of origin. Such an assessment exceeds by its very nature the mere consideration of the "general, civil, legal and political circumstances" in the country concerned. [62]

It follows that establishing a situation falling within the scope of Article 15(c) QR cannot be established by the European Union either, since competence for assessing qualification for international protection remains with Member States. Neither the Commission nor the EUAA have such competence. [63]

Accordingly, the EU lacks both competence and the means to ascertain whether an Article 15(c) QR situation prevails in a candidate country is faced with a situation of "serious and individual threat to a civilian's life or person by reason of indiscriminate violence in situations of international or internal armed conflict" which should preclude its designation as a SCO at EU level.

56 European Commission, *2024 Türkiye Report*, SWD(2024) 696, 30 October 2024, 1.

57 European Commission, *2024 Rule of Law Report Country Chapter North Macedonia*, SWD(2024) 830, 24 July 2024.

58 Department for the Execution of Judgments of the ECtHR, *Türkiye: Main issues before the Committee of Ministers – Ongoing supervision*, available here.

59 Article 1(a) and Recital 6 SCO proposal.

60 The ground is misconstrued in the Explanatory Memorandum, 5, which describes it as follows: "there is indiscriminate violence in situations of international or internal armed conflict in the country".

61 CJEU, C-125/22 *Staatssecretaris van Justitie en Veiligheid*, 9 November 2023, paras 37-43; C-901/19 *Bundesrepublik Deutschland*, 10 June 2021, para 27; C-285/12 *Diakité*, 30 January 2014, para 31; C-465/07 *Elgafaji*, 17 February 2009, paras 39-43.

62 Recital 80 APR.

63 Articles 3, 18(2)(j), 22(4) and Recitals 17, 21, 66 Regulation (EU) 2021/2303 of the European Parliament and of the Council of 15 December 2021 on the European Union Agency for Asylum ("EUAA Regulation"), OJ L 468/1.

- The EU sanctions exception

The second exception prohibits designation of an EU candidate country as SCO where restrictive measures under Title IV of Part Five of the TFEU have been taken "in view of the country's actions". Neither Recital 6 nor the Explanatory Memorandum to the proposal offer further context or explanation behind the relevance of sanctions to the assessment of compliance of the country concerned with the **Article 61 APR** criteria.[64]

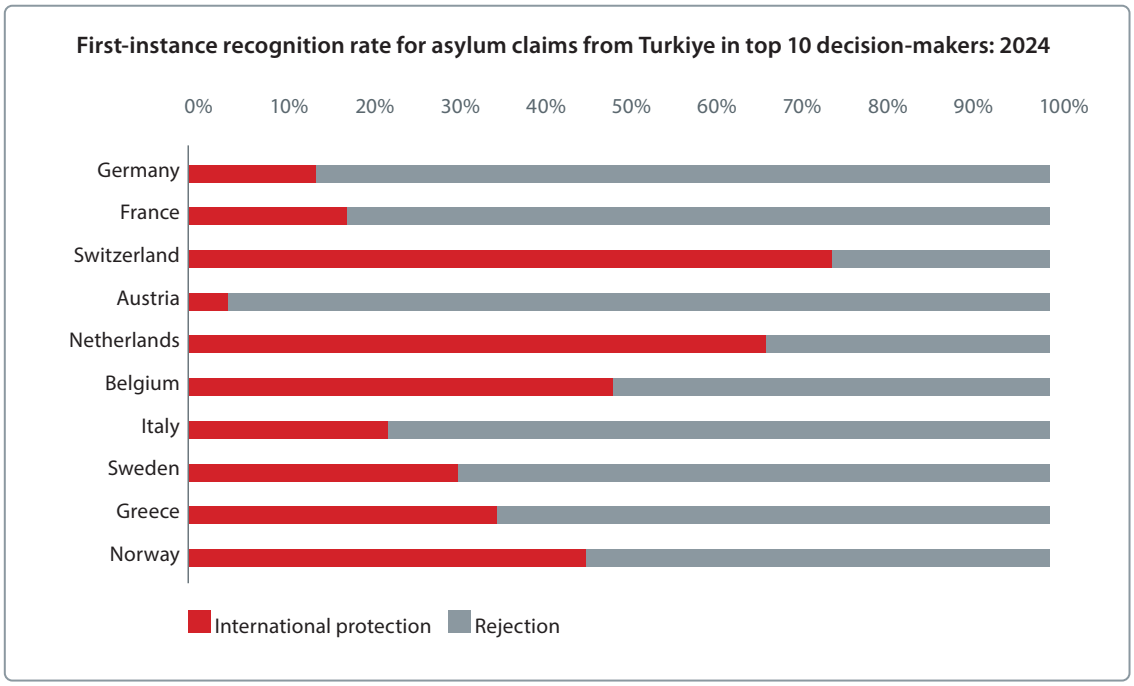
The introduction of such a rule would therefore appear to permit EU foreign policy inroads into what should remain a legal assessment of the safety and protection afforded by the countries concerned to their own nationals. It would also undermine clarity, predictability and legal certainty in the implementation of the APR, given that sanctions regimes may be subject to fluctuation and reconsideration and may not necessarily be known or readily accessible to officials in national determining authorities.

In addition, the wording employed by the Commission lacks clarity and hampers legal certainty. The terms "in view of the country's actions" leave considerable ambiguity as to how sanctions should be construed in relation to SCO designation: would sanctions have to be levelled against the country concerned? Could sanctions against private entities in a country preclude its designation as SCO and, if so, under what circumstances?

- The 20% recognition rate exception

The third exception exacerbates the overlap and circularity between what are – and should be – two discrete grounds for accelerated procedures under the APR, as discussed in Failure to Observe SCO Designation Rules. The SCO proposal provides that an average EU-wide recognition rate above 20% precludes designation of a candidate country as a SCO. This provision too raises effet utile questions: if SCO and the "20% rate" ground have separate scopes, there is no principled reason why the former may only apply so long as the latter is met.

Concerns expressed earlier in relation to the suitability of recourse to Eurostat average EU-wide recognition rates as an indicator of safety in a particular country are all the more pressing in the case of certain EU candidate countries proposed for SCO designation. On Türkiye, for instance, in addition to a plethora of authoritative reports documenting pervasive violations of democratic and rule of law standards, decision-making across national systems remains extremely disparate:



Source: Eurostat, migr_asydcfsta

64 Note also Steve Peers, 'Jumping the Gun? The proposed early application of some of the EU's new asylum pact – and a common list of supposedly "safe countries of origin"', EU Law Analysis, 21 April 2025, available here.

According to Eurostat data, first-instance recognition rates for Turkish nationals in the ten main countries deciding on such claims in 2024 varied from 77% in Switzerland and 67% in the Netherlands to merely 12% in Germany and less than 4% in Austria. Yet, the overall rate is near-definitively shaped by Germany alone, which took more decisions on asylum applications from Türkiye than all other countries combined.

This illustrates yet again the absence of any rigorous scrutiny on the part of the Commission into the actual situation and protection risks facing different categories of people in the countries of origin proposed for SCO designation, contrary to the duty of the EU legislature to observe the Article 61 APR safety criteria in the designation process.

EARLIER APPLICABILITY OF PARTIAL SAFE COUNTRY DESIGNATIONS

Article 1(2) of the SCO proposal recommends an earlier date of applicability in domestic legal orders to 12 June 2026 for the following provisions of the APR:

- The possibility to designate SCO and safe third countries (STC) with exceptions of parts of the territory of the country or of specific groups;

- The possibility for Member States to apply the "20% rate" ground in their accelerated and border procedures.

The Commission takes the view that earlier application of the above rules will not only provide Member States with the means to apply safe country concepts more efficiently and to "react swiftly to any changes in the migratory flows" but will also contribute to "greater consistency across Member States, reducing divergences in national practices and litigation risks"[65].

The absence of due prior announcement of the SCO proposal, as discussed in the Introduction, in conjunction with the current circumstances of ongoing litigation before the CJEU concerning the use of SCO by one particular Member State (Italy), may give reason to believe that the Commission's legislative initiative seeks to directly or indirectly enable practice pursued by that Member State in the context of the contentious Italy-Albania Protocol.[66]

Yet, pursuing such a proposal before the CJEU has delivered its judgments on the – many – pending preliminary references would, if anything, defeat legal certainty and consistency in decision-making across the Member States.

In addition, permitting earlier application of only certain APR provisions without ensuring applicability of its procedural safeguards e.g. free legal counselling at first instance under Article 16 APR and prescriptive rules on interviews in Article 13 APR would undermine the objectives and purpose of the Regulation.[67]

65 Recital 18 SCO proposal; Explanatory Memorandum, 3.

66 Expressly cited by the President of the Commission as an "innovative way to counter illegal migration": European Commission, Letter to the European Council, Ares(2024)7288990, 14 October 2024.

67 Note also Recitals 15-16 APR.

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