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The safe country of origin's legal saga in *Alace and Canpelli*: A roadmap for the future rather than a groundbreaking judgment

Joined Cases C-758/24 and C-759/24 *LC and CP v Commissione Territoriale per il riconoscimento della Protezione Internazionale di Roma – sezione procedure alla frontiera II [Alace and Canpelli]* EU:C:2025:591, Judgment of the Court of Justice (Grand Chamber) of 1 August 2025

1. Introduction

On 1 August 2025, the Grand Chamber of the Court of Justice delivered its judgment in *Alace and Canpelli* following a preliminary reference by the Tribunale Ordinario di Roma ('Rome Tribunal') concerning the notion of a safe country of origin ('SCO') and the scope of judicial review over its designation. Building on its previous judgment in *CV*,[1] the Court reaffirmed the prerogative of national judges to carry out a thorough judicial review of the SCO designation. Moreover, it ruled out the possibility of designating a country of origin as safe where exceptions are made for certain categories of persons.

The case attracted considerable public attention and reached high levels of politicization due to its connection with the externalization of asylum procedures under the Italy-Albania Protocol on migration and asylum ('the Protocol'). Since the Protocol's overall compatibility with EU law fell outside of the scope of the preliminary reference, the judgment did not determine its fate. Nevertheless, it struck a serious blow at its implementation, prompting a harsh reaction from the Italian government, which accused the Court of 'encroaching on areas that are outside its purview'.[2] While some scholars argued along similar lines that the Court had misused the duty of disapplication, impinging on the legislature's prerogatives,[3]

1. Case C-406/22 *CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky* EU:C:2024:841.

2. 'The judiciary, this time at European level, is once again encroaching on areas that are outside its purview, in the face of responsibilities that are political in nature'. Italian government, 'Statement by Palazzo Chigi on the EU Court of Justice's decision regarding safe countries' (1 August 2025) <www.governo.it/en/articolo/statement-palazzo-chigi-eu-court-justice-s-decision-regarding-safe-countries/29393> (all websites last visited 31 July 2026).

3. Mario Savino, 'Disapplication Unbound: The Alace Ruling on Safe Countries of Origin' (*Verfassungsblog*, 4 September 2025) <verfassungsblog.de/alace-ruling-cjeu/>; Mario Esposito, 'La designazione dei Paesi sicuri tra legislatore e giudice, alla luce di

others welcomed the decision as a 'total win' for fundamental rights and the rule of law.[4]

In this annotation, the authors argue that, despite such a divisive impact, the judgment is far from being revolutionary; instead, it is significant in that it reaffirms some foundational principles of the EU legal order, such as the requirement of effective judicial protection, the primacy of EU law and the central role of national judges in the scrutiny and uniform application of EU law. At the same time, while reiterating these core principles, it also lays bare the risks of dysfunction and the tensions that may arise within the system when the regulatory framework and political environment place it under strain.

The annotation is organized as follows. Section 2 outlines the legal and political background and the facts of the case. Sections 3 and 4 summarize the Opinion of the Advocate General and the Court's judgment respectively. The analysis in Section 5 focuses on the most relevant aspects of the judgment (Section 5.1): the safeguard of effective judicial protection (Section 5.2); the primacy of EU law (Section 5.3); and the implications in terms of disapplication, the role of national judges and the dialogue between courts (Section 5.4). It furthermore reflects on *Alace*'s legacy in the context of changing asylum procedures (Section 5.5). Section 6 concludes and offers some reflections on the overall relevance of the judgment.

2. Factual and legal background

The joined cases *Alace and Canpelli* arise from an appeal lodged by two Bangladeshi nationals against decisions of the Italian asylum authorities rejecting their applications for international protection as manifestly unfounded, on the grounds that they originated from an SCO within the meaning of the former Directive 2013/32/EU (the Asylum Procedures Directive, 'the Directive').[5] The legal and factual background of the case is particularly complex, as Italian and EU asylum legislation and case law intertwine to form what has become a genuine legal saga. A proper

Alace e Canpelli, e i suoi riflessi sull'identità costituzionale' (*DPCE Online*, 23 October 2025) <www.dpceonline.it/index.php/dpceonline/article/view/2570/2814>.

4. Chiara Favilli and Luisa Marin, 'Alace and Canpelli: the Court of Justice firmly constrains domestic extraterritorial asylum processing politics' (*EU Law Analysis*, 14 August 2025) <eulawanalysis.blogspot.com/2025/08/alace-and-canpelli-court-of-justice.html>.

5. Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ L180/60.

understanding of the ruling therefore requires closer examination of the circumstances underlying the litigation.

2.1. *Safe country of origin in EU asylum law*

The notion of an SCO was introduced in order to speed up the examination of asylum applications lodged by a national of a country designated as safe by submitting them to an accelerated procedure. Even when such procedures apply, the examination of the application must remain complete and guarantee full and effective judicial protection.[6]

Article 37(1) of the Directive established that Member States may designate a third country as an SCO provided that the safety conditions laid down in Annex I to the Directive are met.[7] Moreover, the national lists of SCOs must be based on reliable and up-to-date sources of information and subject to regular review.[8] Applications for international protection submitted by an SCO applicant trigger a 'special examination scheme', which can significantly restrict procedural guarantees. First, 'that scheme is based on a rebuttable presumption of adequate protection in the country of origin'.[9] The applicant thus carries the burden to rebut such a presumption by submitting 'serious grounds relating to his or her particular circumstances'.[10] Second, Member States may decide to examine the application in an accelerated procedure or conduct the examination at the border or in transit zones.[11] Third, the application can be rejected as 'manifestly unfounded' when this is provided for under national law.[12] That qualification implies that an appeal against such a rejection under Article 46 of the Directive does not have an automatic suspensive effect, and the applicant may only remain in the territory following a decision by the court.[13] As a result, SCO applicants must substantiate, within a limited time frame, an individual exception based on serious grounds, failing which they may be

6. Recital 18 of Asylum Procedures Directive (n 5).
7. According to the Asylum Procedures Directive (n 5), Annex I: 'A country is considered as a safe country of origin where, on the basis of the legal situation, the application of the law within a democratic system and the general political circumstances, it can be shown that there is generally and consistently no persecution as defined in Article 9 of Directive 2011/95/EU, no torture or inhuman or degrading treatment or punishment and no threat by reason of indiscriminate violence in situations of international or internal armed conflict.'
8. Art 37(2) and (3) of Asylum Procedures Directive (n 5).
9. *CV* (n 1) [47]; Judgment [48].
10. Art 36(1) of Asylum Procedures Directive.
11. Asylum Procedures Directive, arts 31(8)(b) and 43.
12. Asylum Procedures Directive, art 32(2).
13. Asylum Procedures Directive, art 46(6)(a).

repatriated while judicial proceedings are still pending.[14] Finally, an SCO applicant whose application is examined at the border may be detained during the examination procedure.[15]

2.2. *Safe … except for …*

The SCO designation system has undergone several revisions within a relatively short period of time. Two elements have been particularly contentious: the possibility to adopt SCO designations that exclude specific geographical areas (territorial exclusions) or categories of persons (subjective exclusions); and the attribution to the EU of the competence to adopt a common list alongside national ones. Both provisions featured in the first Asylum Procedures Directive ('Directive 2005/85/EC') but were subsequently removed in the recast of Directive 2013/32. The new Asylum Procedures Regulation 2024/1348 ('APR'), replacing the Directive under the Pact on Migration and Asylum,[16] introduces both the possibility of territorial and category-based exclusions for clearly identifiable groups of persons and the common EU list. While the new regulation entered into force in May 2024, its application was deferred to 12 June 2026. This meant that, despite partial designations being provided for in the current legislation, the regime applicable when Alace and Canpelli applied for international protection did not foresee them. It must be noted that in February 2026, following the *Alace* judgment, the EU amended the APR to adopt a common EU SCO list and bring forward the date of application of territorial and subjective exceptions.[17]

The issue of SCOs remained largely silent in the Court's case law up to October 2024, when following a preliminary reference by a Czech tribunal, the Court delivered the *CV* judgment;[18] a landmark decision paving the way

14. Chiara Favilli and Luisa Marin, 'Il controllo giurisdizionale sulla designazione di un paese d'origine sicuro dopo le sentenze CV e ALACE' (2025) 3 Rivista del Contenzioso Europeo 6.

15. Asylum Procedures Directive, art 31(8)(b) read together with art 8(3)(c) of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L180/96.

16. Regulation (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU [2024] OJ L2024/1348.

17. Regulation (EU) 2026/464 of the European Parliament and of the Council of 24 February 2026 amending Regulation (EU) 2024/1348 as regards the establishment of a list of safe countries of origin at Union level [2026] OJ L2026/464. However, the EU SCO list applies from 12 June 2026.

18. *CV* (n 1); see Steve Peers, '"Safe countries of origin" in asylum law: the CJEU first interprets the concept' (*EU Law Analysis*, 14 October 2024) <eulawanalysis.blogspot.com/

for *Alace*. In *CV*, the admissibility of territorial exclusions was ruled out under current EU law. Furthermore, the Court held that national judges seized with an appeal of an SCO applicant must review the legality of the SCO designation – even of their own motion, assessing whether the country in question meets (and continues to meet) the material conditions laid down in Annex I of the Directive.

2.3. *The Italian landscape: Italian judges …*

The *CV* judgment had a significant impact on the Italian legal system. Prior to *CV*, the list of SCOs was adopted by an interministerial decree and included both territorial and subjective exclusions.[19] In response to that ruling, the Italian government adopted Decree-Law No. 158/2024[20] – relevant *ratione temporis* in the main proceedings that gave rise to *Alace* – amending the domestic provisions on SCOs.

The Decree-Law incorporated the list of SCOs directly into primary legislation. This upgrading of the legal source pursued a twofold objective. First, it was supposed to make it more difficult for national courts to disapply the relevant provisions, as they now formed part of a legislative act. Second, it reduced access to the sources of the designation, since the legislative text merely reproduced the list of countries without providing any explanation of the reasons underlying their designation. Furthermore, the Decree-Law removed territorial exclusions yet continued to allow for subjective exclusions. Such an amendment rested on a very narrow reading of the *CV* judgment, which in the government's view merely implied the inadmissibility of territorial exceptions.

By contrast, drawing on *CV*, several Italian courts held that subjective exclusions were likewise inadmissible. A wave of preliminary rulings followed, with several judges disapplying the newly adopted Italian provisions. By the time the *Alace* judgment was delivered, around 60 preliminary

2024/10/safe-countries-of-origin-in-asylum-law.html≥; and Karolina Michková and David Kosař, 'Designation of the safe countries of origin in EU Member States: Uniform rules, divergent practices? *CV v Ministerstvo vnitra ČR*' (2025) 62 Common Market Law Review 1155, doi: 10.54648/COLA2025062.

19. Pursuant to the Italian Legislative Decree No 25/2008 of 28 January 2008 transposing the Asylum Procedures Directive <www.refworld.org/legal/legislation/natlegbod/2008/102390>.

20. Decree-Law No 158/2024 of 23 October 2024 Urgent Provisions Regarding Procedures for the Recognition of International Protection (later integrated within the Decree-Law No 145/2024 and converted into Law 187/2024 of 10 December 2024 (GU Serie Generale n.289).

proceedings were already pending before the Court.[21] Due to their similarity, the Court only examined the referral from the Rome Tribunal and stayed the others, which were subsequently struck out after the judgment.

2.4. *... and Italian politics: The Italy-Albania Protocol*

While the preliminary reference at the origin of *Alace* formally concerns the SCO mechanism, its broader political significance only emerges when placed in the context of the 2023 Protocol between Italy and Albania.[22] This provides, *inter alia*, that applications for international protection submitted by persons rescued in international waters by Italian authorities and coming from countries designated as SCOs under Italian law will be examined in two centres established in Albanian territory that are treated as Italian border areas and where Italian authorities exercise full jurisdiction.[23]

Thus, originating from a safe country – as the applicants in *Alace and Canpelli* – constituted the prerequisite for transferring asylum seekers to Albania. By disapplying the national list of SCOs and referring to the Court in the aftermath of the *CV* judgment, Italian courts effectively neutralized, at least temporarily, the Protocol shortly after its entry into force. As a consequence, most applicants had to be transferred back to Italy, resulting in a paradoxical and inefficient sequence of repeated transfers.[24]

21. For a comprehensive overview of the SCO saga in the Italian legal order, see further Favilli and Marin, 'Il controllo giurisdizionale' (n 14) 30; see also Bernardo Cortese, 'Dai Paesi (terzi) di origine sicuri a un Paese fondatore non più così sicuro del suo posto nel Diritto dell'Unione: riflessioni a margine di Corte di giustizia, sentenza 1° agosto 2025, cause riunite c-758/24 e c-759/24, Alace e Canpelli' (2025) 3 Diritto, Immigrazione e Cittadinanza 5.

22. 'Protocol between the Government of the Italian Republic and the Council of Ministers of the Republic of Albania on Strengthening Cooperation in Migration Matters' <www.esteri.it/wp-content/uploads/2023/12/PROTOCOLLO-ITALIA-ALBANIA-in-materia-migratoria.pdf>.

23. Stefano Montaldo, 'Not in my backyard! Outsourcing EU asylum procedures to third countries: A challenge for the Common European Asylum System' (2025) 62 Common Market Law Review 349, doi: 10.54648/COLA2025023; Andreina De Leo and Eleonora Celoria, 'The Italy–Albania Protocol: A new model of border-shifting within the EU and its compatibility with Union law' 2025 (31) Maastricht Journal of European and Comparative Law 595, doi: 10.1177/1023263X241309601; Lorenzo Piccoli, 'Offshoring Asylum the Italian Way' (*Verfassungsblog*, 14 November 2023) <verfassungsblog.de/offshoring-asylum-the-italian-way/>.

24. Hannah Roberts and Elena Giordano, 'Meloni's Albania scheme hits another bump in the road' (*Politico*, 12 November 2024) <www.politico.eu/article/giorgia-meloni-italy-albania-migrant-scheme-hits-another-bump-bangladesh-egypt-court-judge-salvatore-casciaro/>.

2.5. *The preliminary reference of the Rome Tribunal*

The preliminary reference of the Rome Tribunal questioned the compatibility of the amended national legislation with EU law. By analogy with the *CV* judgment, the judges in Rome considered that countries could not be declared safe if certain categories of persons were exempted from the safety presumption, as in the case of the Bangladesh safety designation.

Four preliminary questions were submitted by the referring Court. The first question asked whether EU law, and in particular Articles 36, 37 and 46(3) of the Directive, read in the light of Article 47 of the Charter, precluded the SCO designation by means of a legislative act. The second and third questions concerned the scope of judicial review on the SCO designation, and in particular whether Member States must make accessible the sources of information that have determined such a designation, and whether domestic courts can also review it based on other information gathered elsewhere. Finally, the fourth question asked whether a Member State can designate a country as safe in the presence of subjective exclusions.

The case was decided by the Grand Chamber through an expedited procedure due to the applicants' sensitive circumstances. 16 Member States submitted observations; all, excluding Germany, supported the position of the Italian government. In an atypical move, the Commission changed its position halfway through the procedure in favour of the Italian government.[25]

3. Opinion of the Advocate General

The Opinion of Advocate General de la Tour may aptly be described as a masterpiece of compromise, reflecting a cautious effort to balance the competing interests at stake in what is, undeniably, a complex and politically sensitive case. The result is a somewhat hesitant opinion that remains in a grey area, yet provides some useful indications for the future.

As regards the first question, the Advocate General observes that the absence of specific provisions in Directive 2013/32 implies that Member States enjoy broad discretion in choosing the form and nature of the act designating the SCOs, be it legislative or administrative. That discretion is, however, constrained by the obligation to ensure the primacy of EU law and the full effectiveness of the Directive, notably with respect to the applicant's

25. For a critical view, see Cortese (n 21) 16.

right to an effective judicial remedy under Article 46.[26] In other words, the nature of the act cannot curtail the prerogatives of national courts to review its compliance with EU law.

The second and third questions, relating to the disclosure of information sources underlying the designation, are addressed jointly, much as the Court itself would later do. The Advocate General's reasoning is anchored on the requirement of effective judicial protection under Article 46 of the Directive and Article 47 of the Charter. In order to exercise that right effectively, the applicant must be able to access – and the court to review – the reasons underlying the rejection of the application. If the latter are not disclosed, national courts can rely on alternative reliable sources of information to assess the lawfulness of the designation.[27]

Finally, turning to the fourth question, Advocate General de la Tour holds that Member States can designate a third country as safe even when certain categories of persons are excluded from the safety presumption. This is certainly the most controversial part of the Opinion, and the Advocate General seems to be well aware of this, judging from the several caveats and premises that accompany it. To start with, the Advocate General acknowledges that there may be two different interpretations, both of which are legally defensible. He opts for what he terms the more 'pragmatic' approach, allowing Member States to retain the discretion to introduce subjective exemptions, even if this interpretation admittedly sits uneasily with the Court's earlier judgment in *CV*, which had excluded such a possibility.[28] Nevertheless, in the Advocate General's view, this pragmatic solution is preferrable, as it reflects the pressures faced by national asylum systems and aligns with a consistent interpretation of the forthcoming APR, which – although not relevant *ratione temporis* – expressly provides for subjective exclusions (see Section 2).[29]

However, the discretion granted to Member States is not unlimited and must not undermine the effectiveness of the notion of SCO. For that reason, the Advocate General sets out several conditions circumscribing the use of subjective exclusions: the categories concerned must be clearly defined to enable the competent national authorities to identify them immediately and with certainty; and the number of persons falling within such exceptions must remain relatively limited.[30] As argued in Section 5.5, these conditions

26. Joined Cases C-758/24 & C-759/24 *LC and CP v Commissione Territoriale per il riconoscimento della Protezione Internazionale di Roma – sezione procedure alla frontiera II* EU:C:2025:260, Opinion of AG de la Tour, points 36–38.
27. Opinion, points 64–65.
28. Opinion, point 72.
29. Opinion, point 94.
30. Opinion, points 87–93.

may provide useful guidance for the future interpretation of subjective exclusions under the new APR.

4. Judgment of the Court of Justice

The judgment of the Court diverges significantly, both in content and approach, from the Advocate General's Opinion. The answers to the first three preliminary questions certainly recall many of the Advocate General's arguments. Yet, the Court replaces the rather cautious stance of the Advocate General with a more assertive approach, reaching a fully divergent conclusion on the fourth question.

To begin with, the Court underlines the importance of considering Article 46(1) of the Directive in conjunction with Article 47 of the Charter, from the outset signalling what will be the cornerstone of the judgment: the right to effective judicial remedy. On this basis, the Court addresses the first preliminary question, stating, much like the Advocate General, that in the absence of any explicit provision in Directive 2013/32, Member States enjoy discretion in choosing the legal instrument used to designate SCOs. However, such discretion operates within the limits imposed by the primacy of EU law and must not interfere with the obligation to ensure the full effectiveness of the Directive. The Court goes one step further by explicitly acknowledging the prerogative of national courts to review SCO designations and disapply domestic provisions – including of a legislative nature – that are contrary to the Directive's provisions having direct effect.[31] This is a crucial passage that, as argued in the analysis, explicitly rules out the need for internal referrals to constitutional courts (as advocated by the submission of the Italian government).[32]

Having established that national courts must carry out a thorough judicial review of the substantive conditions for the SCOs designation, the Court turns to the second and third questions concerning the disclosure and use of information. The Court builds on the Advocate General's observation that, in order to rebut the presumption of safety of her country of origin, the applicant must be able to know the reasons for that designation and, to that end, have access to the information on which it is based. Here again, the Court places Article 47 of the Charter at the centre of its reasoning. It emphasizes that Article 46 of the Directive must provide remedies that are consistent with Article 47 of the Charter, which 'is sufficient in itself' to

31. Judgment [63].
32. Joined Cases C-758/24 & C-759/24, Statement of case or written observations (Italy), 27 December 2024.

confer on individuals a right to judicial protection that may be relied on before a court; the same must therefore apply to Article 46(3) of the Directive read in the light of Article 47 of the Charter.[33] Furthermore, to perform the full and *ex nunc* examination required by Article 46(3) of the Directive, courts must be able to carry out an up-to-date assessment of the country's safety, also considering, where appropriate, new evidence that has emerged since the designation. For that purpose, national courts may also consider information other than that originally relied on for the designation, provided it is reliable and parties are given the opportunity to submit their observations.

Finally, and as anticipated, the Court's conclusion on the fourth question diverges from that of the Advocate General. Based on a literal, contextual and teleological interpretation, the Court holds that neither the wording of the Directive nor the context of the criteria set out in Annex I support the admissibility of subjective exceptions. As established in *CV*, the balancing between the objectives of procedural speed and thorough examination is a matter for the EU legislature. Hence, the absence of any provision on subjective exceptions in the Directive currently applicable reflects a deliberate legislative choice in favour of a complete examination.[34] While such a balancing exercise may result in a different outcome – as in the new APR, which explicitly allows for subjective exceptions – that instrument is not yet applicable. Unlike the Advocate General, the Court does not engage in pragmatic considerations, nor does it consider recourse to consistent interpretation appropriate in this context.

5. Analysis

5.1. *Preliminary considerations*

Assessing the relevance of *Alace* is a somewhat challenging endeavour. On the one hand, the ruling has been described as 'a landmark judgment'.[35] It has made headlines, prompted extensive participation by Member States' governments and carried significant political and judicial implications. On the other hand, the judgment may appear to have limited long-term impact,

33. Judgment [77].
34. Judgment [105].
35. Favilli and Marin, 'Il controllo giurisdizionale' (n 14).

given that the applicable provisions were quickly replaced by the new APR, which expressly allows for subjective exclusions.[36]

The analysis that follows shows that *Alace* is neither groundbreaking nor insignificant. Its main relevance lies with anchoring national judges' power of review into key tenets of the EU legal order, such as effective judicial protection, primacy, direct effect and the duty of disapplication. Such principles enable national courts' toolboxes to ensure the effectiveness of EU law and set the boundaries of their action. Those boundaries are broad, insofar as the Court grants national judges an extensive power of review that does not require prior intervention by the constitutional courts. Yet they are also constrained by the effective application of EU law. There is no mandate to an 'unbound disapplication'.[37] On the contrary, disapplication remains an exceptional remedy designed to face the dysfunctionalities of the system.

By the same token, the effectiveness and primacy of EU law also define the perimeters within which legislative discretion can operate. That effectiveness is guaranteed by the EU judicial system, which according to Article 19(1) TEU, rests on both EU and national courts.[38] Notably, the latter are the 'front doors' of the EU legal order. At its core, the *Alace* judgment thus reaffirms and safeguards the role of national judges as the primary guardians of individual rights conferred by EU law.

In this sense, *Alace* offers the Court an opportunity to lay the groundwork for future efficient collaboration with national courts in view of the application of the new APR. From this point of view, rather than being a judgment of the past, *Alace* very much looks to and prepares for the future. In fact, the role of national courts as primary guardians of the EU legal order will become ever more crucial once the instruments of the New Pact becomes applicable. Several elements of the new framework raise issues of compatibility with primary law, and the Court will likely be called on to assess their validity. In that context, national courts will be responsible for identifying any *prima facie* invalidity and referring it to the Court. The SCO mechanism may thus provide a paradigmatic example for this intensifying form of judicial interaction.

36. Several preliminary references on the compatibility of the Protocol with EU law have been lodged: Joined Cases C-706/25 *Comeri* and C-707/25 *Sidilli*, and Case C-414/25 *Sedrata.*

37. To quote Savino (n 3).

38. Among others, see Opinion 1/09 EU:C:2011:123 [66]; see also Case C-64/16 *Associação Sindical dos Juízes Portugueses v Tribunal de Contas* EU:C:2018:117 [32].

5.2. *Safe country of origin and effective judicial protection*

At the core of the judgment lies the need to ensure effective judicial protection, as guaranteed by Article 46 of the Directive and Article 47 of the Charter. The latter acquires full meaning in connection with the substantive nature of the right to asylum. In fact, where a third-country national fulfils the conditions for international protection laid down by EU law, Member States enjoy no discretion and are obliged to grant the applicant the relevant status.[39] It follows that the scope of judicial review under Article 46(3) 'must be interpreted in a manner that contributes […] to preventing a situation in which such protection is denied despite the applicable conditions being met'.[40] In other words, judicial review of the SCO designation is instrumental to ensuring the effective judicial protection of the right to international protection. Insofar as non-compliance with the EU designation criteria leads to the application of a special examination procedure, it may undermine the full and effective assessment of the application. This would be contrary to the principle that, once the conditions laid down by EU law are satisfied, Member States are required to grant international protection.

Furthermore, effective judicial review plays a crucial role in the light of the discretion that, conversely, Member States do enjoy in the SCOs designation process. A system allowing for national lists necessarily implies a certain degree of disparity. Although the common criteria of Annex I should minimize discrepancies between national lists by requiring assessments to be based on objective and well-defined parameters, in practice assessments can – and do – vary from country to country. Thus, judicial review on the SCO designation serves the purpose of ensuring that, even in the presence of divergent lists, the Annex I criteria are respected and applications are not treated differently depending on the Member State examining their claim. An additional problem with national SCO lists is that, as noted by Favilli and Marin, Member States tend to designate as safe the countries from which they receive high numbers of asylum applications, thus making political use of the SCO mechanism.[41] This situation casts a shadow over the rightful and uniform implementation of the notion and contributes to increased litigation, making the need for a thorough judicial review by national courts ever more crucial.

39. Case C-585/16 *Serin Alheto v Zamestnik-predsedatel na Darzhavna agentsia za bezhantsite* EU:C:2018:584 [105]-[106]; Case C-556/17 *Alekszij Torubarov v Bevándorlási és Menekültügyi Hivatal* EU:C:2019:626 [51]; *CV* (n 1) [50].

40. Case C-406/22 *CV v Ministerstvo vnitra České republiky, Odbor azylové a migrační politiky* EU:C:2024:442, Opinion of AG Emiliou, point 165.

41. Favilli and Marin, 'Il controllo giurisdizionale' (n 14) 4.

5.3. *Primacy of EU law and direct effect*

The reply to the first preliminary question rests on two main grounds. First, the right to an effective remedy, which, as just discussed, requires that national courts be empowered to review whether the national act designating an SCO complies with the EU criteria governing such a designation. Second, the principle of the full effectiveness of directives and the primacy of EU law, which entail the duty to disapply any national provision incompatible with EU law. Although both elements underpin the Court's reply, the duty of disapplication ultimately derives from the direct effect of Article 37(1) of the Directive and Annex I. Thus, the first preliminary question allows the Grand Chamber to spell out the national courts' duty to disapply any national provision that breaches the EU criteria for SCO designation.[42]

It is worth noting that the Court does not engage in an assessment of the direct effects of the Directive's provisions on SCOs. It only mentions direct effect in passing, when it states that the Member States' discretion does not affect the obligation of national courts to disapply 'any provision of national legislation, even if adopted subsequently, which is contrary to the provisions of that directive with direct effect'.[43] On this basis, some scholars have questioned the direct effect of such provisions and the deriving duty of disapplication by national courts. They thus hold that, since the EU SCO provisions are not directly effective, the decision taken by Italian judges to disapply domestic law encroaches on the discretionary power of the government.[44]

In the view of the authors of this annotation, such criticism is open to question. To begin with, the Court's implicit mode of reasoning on direct effect is far from exceptional. As De Witte observes, the Court has repeatedly acknowledged that the provisions of an EU directive may be directly invoked as a standard for reviewing national provisions that may violate them.[45] On several such occasions, it has done so without undertaking a

42. Cortese (n 21) 8–9.

43. Judgment [63].

44. Savino (n 3); Matteo Zamboni, 'The judgment of the Grand Chamber of the Court of Justice of the European Union on the Italy-Albania Protocol' (*EU Law Analysis*, 1 September 2025) <eulawanalysis.blogspot.com/2025/09/the-judgment-of-grand-chamber-of-court.html>.

45. Case C-194/94 *CIA Security International SA v Signalson SA and Securitel SPRL* EU:C:1996:172; Case C-72/95 *Aannemersbedrijf PK Kraaijeveld BV and Others v Gedeputeerde Staten van Zuid-Holland* EU:C:1996:404; Case C-127/02 *Landelijke Vereniging tot Behoud van de Waddenzee and Nederlandse Vereniging tot Bescherming van Vogels v Staatssecretaris van Landbouw, Natuurbeheer en Visserij* EU:C:2004:482. See Bruno De Witte, 'Direct Effect, Primacy, and the Nature of the Legal Order' in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (Oxford University Press 2021).

preliminary and explicit assessment of whether the provision at issue had direct effect.[46] Second, while Article 37(1) confers on Member States the discretion to decide whether to apply the notion of SCOs and, if so, to determine which third countries may be designated as such, that margin of discretion does not in itself preclude the direct effect of Article 37(1) and Annex I. In fact, according to established case law, a provision of a directive may be regarded as 'unconditional and sufficiently precise' even if it leaves a certain margin of discretion in its implementation, 'where it imposes on Member States in unequivocal terms a precise obligation as to the result to be achieved' and the latter is not subject to any conditions for its application.[47] In such circumstances, that margin of discretion is subject to judicial review in order to determine whether, in implementing the directive, the national legislature has exceeded the limits set by EU law.[48] In other words, the decisive element in recognizing the direct effect of a directive's provision does not lie per se in the existence of a margin of discretion, but in whether that discretion is circumscribed by clear and precise criteria, compliance with which is amenable to judicial review.

46. As noted by De Witte, this happens especially when the referring court, as in *Alace*, does not raise the issue of direct effect. See eg Joined Cases C-55/07 & C-56/07 *Othmar Michaeler, Subito GmbH and Ruth Volgger v Amt für sozialen Arbeitsschutz and Autonome Provinz Bozen* EU:C:2008:248. De Witte (n 45) 192. See also Daniele Gallo, *Direct Effect in EU Law* (OUP 2025) 103, who contends that the Court has at times adopted an 'argumentative minimalism' in addressing direct effect and the requirements of clarity, precision and unconditionality. In the view of the authors of this annotation, however, that critique does not apply to the *Alace* judgment.

47. Case C-387/19 *RTS infra BVBA and Aannemingsbedrijf Norré-Behaegel v Vlaams Gewest* EU:C:2021:13 [47]; C-205/20 *NE v Bezirkshauptmannschaft Hartberg-Fürstenfeld (Direct effect)* EU:C:2022:168 [47].

48. Case C-723/17 *Lies Craeynest and Others v Brussels Hoofdstedelijk Gewest and Brussels Instituut voor Milieubeheer* EU:C:2019:533 [45]; Case C-237/07 *Dieter Janecek v Freistaat Bayern* EU:C:2008:447 [46]. It is worth recalling the judgment in *Bezirkshauptmannschaft Hartberg-Fürstenfeld* (n 47), in which the Grand Chamber, expressly departing from its earlier ruling in C-384/17 *Dooel Uvoz-Izvoz Skopje Link Logistik N&N v Budapest Rendőrfőkapitánya* EU:C:2018:810 [27], recognized the direct effect of the proportionality requirement for penalties applicable to infringements of national provisions in the field of posted workers and the provision of services. The Court stated that 'although that provision leaves the Member States a certain discretion in defining the rules on penalties applicable in the event of infringements of the national provisions adopted pursuant to that directive, that discretion is limited by the prohibition, laid down by that provision in a general manner and in unequivocal terms, on imposing disproportionate penalties'. See further Stefano Montaldo, 'Handle with care! The direct effect of the requirement of proportionality of sanctions and the remedy of disapplication: NE v. Bezirkshauptmannschaft Hartberg-Fürstenfeld' (2023) 60 Common Market Law Review 863, doi: 10.54648/COLA2023055.

This is precisely the case with Article 37(1) and Annex I of the Directive. Article 37(1) confers on Member States the power to make use of the SCO concept, which, however, must be exercised 'in accordance with Annex I'. While the decision to retain or introduce the SCO mechanism reflects a political choice, it must be followed by an assessment aimed at identifying the third countries to be designated as SCOs.[49] That assessment likewise involves a degree of technical discretion, but it must operate within the framework clearly defined by the safety criteria laid down in Annex I. It can therefore be maintained that Article 37(1) and Annex I impose on Member States an unequivocal and precise 'obligation as to the result to be achieved' when designating SCOs; namely, to ensure that such a designation complies with the clear and detailed requirements set out in Annex I. This obligation corresponds to the right of an applicant whose country of origin has been designated as safe in breach of the safety criteria laid down by EU law to have their application examined under the ordinary procedure and, consequently, not to be subjected to the limitations stemming from the derogatory procedure associated with the SCO mechanism. As noted in the previous section, that right is directly enforceable before the national court under Article 46(3) of the Directive. In reviewing the legality of the designation, that court does not replace the legislature's choices with its own assessment; rather, its review is confined to verifying whether the designation complies with the technical criteria clearly defined in Annex I.

In conclusion, while implicitly recognizing the direct effect of Article 37(1) and Annex I to the Directive, the Grand Chamber did not expressly address that issue, simply because this was unnecessary. The direct effect of those provisions was not in doubt in light of the Court's settled case law, and the referring court had not raised any concerns in that regard.

5.4. *Disapplication and the dialogue between the courts*

The Court's recognition, even if in an implicit manner, of the direct effect of Article 37(1) and Annex I of the Directive has, however, a significant impact on the scope of judicial review by national courts. The main implication is, as noted, the duty of national judges to disapply any contrasting national provision.

Yet, this was precisely the main point of contention between the referring Court and the Italian government. A central issue at the hearing before the Grand Chamber concerned the respective roles of the Italian Constitutional Court ('ICC') and the national court seized of the appeal of

49. In this sense, see Favilli and Marin, 'Il controllo giurisdizionale' (n 14) 13.

an SCO applicant. Notably, the Italian government argued that the national court's review should be limited to examining, under Article 36(1) of the Directive, whether the presumption of safety applies to the applicant or whether it was successfully rebutted. By contrast, the national court would be prevented from verifying the legality of the designation; and, in the event of doubt, should refer the question to the ICC, which may refer a preliminary ruling to the Court of Justice if necessary.[50] Unsurprisingly, the Grand Chamber rejected the government's argument, referring to the historic *Simmenthal* principle, according to which national courts may directly disapply any national provision contrary to an EU law provision with direct effect without awaiting the intervention of the national legislature or the Constitutional Court.[51]

It was pointed out that the solution adopted by the Court in *Alace*, based on disapplication, raises concerns with respect to the principles of equality and legal certainty.[52] In particular, since the effects of disapplication are confined to the case at hand and do not entail the annulment of the designation concerned, disapplication may compromise the uniform application of the SCO system within the national legal order. By contrast, a centralized review conducted by the Constitutional Court would allow for the annulment of an illegal designation with *erga omnes* effect.

This critique certainly highlights the case-specific nature of disapplication. Nevertheless, this is the side effect of an incisive instrument, enabling national judges to ensure the effective and immediate protection of an individual right conferred by EU law despite the national legislature's failure to implement it correctly. At the same time, disapplication constitutes no more than a 'minimum guarantee' in favour of individuals, applicable in situations of systemic dysfunction. Indeed, that remedy does not encroach on the legislature's prerogatives, which remain under the obligation to fully and properly align the national legal order with EU law even when disapplication is available.[53] From this perspective, the potential divergence in the application of EU law at national level is the consequence of the national

50. Matteo Zamboni, 'The Italy-Albania protocol before the Court of Justice of the European Union – hearing of the CJEU' (*EU Law Analysis*, 19 March 2025) <eulawanalysis.blogspot.com/2025/03/the-italy-albania-protocol-before-court.html>; Esposito (n 3).

51. Case 106/77 *Amministrazione delle Finanze dello Stato v Simmenthal SpA* EU:C:1978:49.

52. Savino (n 3); Francesco Munari, 'Alace, Canpelli e … l'insicurezza dei paesi terzi sicuri' (2025) 3 Unione europea e diritti 10.

53. Case 102/79 *Commission of the European Communities v Kingdom of Belgium* EU:C:1980:120 [12].

legislature's inaction.[54] Disapplication is not the direct cause of that divergence; it is rather the remedy provided by EU law to address it and ensure immediate and effective protection of individual rights in pathological situations, albeit limited to the specific case at hand.[55]

In the Italian legal order, the equality and legal certainty issues raised by disapplication have been further called into question by the approach developed by the ICC on the so-called 'dual preliminarity'. That expression refers to cases where a national provision raises issues of compliance with both the Italian Constitution and EU law. In this regard, in Judgment No. 269/2017, the ICC adopted a centralized attitude by stating its jurisdiction to review cases involving a conflict between a provision of national law and a fundamental right protected by both the Charter and the Italian Constitution.[56] More recently, in its Judgment No. 181/2024, the ICC held that its constitutional review is not precluded even in cases of conflict between a national law and an EU law provision with direct effect, provided that the question referred by the ordinary court has 'a constitutional tone'.[57] By resorting to such a vague criterion, the Court appeared to suggest a

54. C-205/20 *NE v Bezirkshauptmannschaft Hartberg-Fürstenfeld* EU:C:2021:759, Opinion of AG Bobek, point 103.

55. In this regard, Savino has argued that art 36 of the Asylum Procedures Directive, which allows an applicant to rebut the safety presumption based on serious grounds related to their particular circumstances, would alone ensure the protection of the applicant in the event of a national designation incompatible with the EU safety criteria. EU Law Live podcast, 'The Alace Case and safe countries of origin. A conversation with M Cartabia, M Savino and F Munari' (10 November 2025) <eulawlive.com/podcast/the-alace-case-and-safe-countries-of-origin-a-conversation-with-m-cartabia-m-savino-and-f-munari/>. This observation, however, seems to mix up two different issues: the possibility granted to any applicant to rebut the presumption of safety based on their particular circumstances according to art 36 of the Asylum Procedures Directive, and the SCO designation review, which is carried out independently of any connection with the applicant's individual situation. These two things are clearly distinct, as noted by both the AG (Opinion, point 44) and the Court (Judgment [89]).

56. Corte Costituzionale, Judgment 269/2017, GU 20/12/2017 no 51. A full analysis of this issue falls outside of the scope of this annotation. See further: Chiara Amalfitano, 'Il dialogo tra giudice comune, Corte di Giustizia e Corte costituzionale dopo l'obiter dictum della sentenza n. 269/2017' (2019) Osservatorio sulle fonti 1; Daniele Gallo, 'Challenging EU constitutional law: The Italian Constitutional Court's new stance on direct effect and the preliminary reference procedure' (2020) 25 European Law Journal 434, doi: 10.1111/eulj.12333; Nicole Lazzerini, 'Dual preliminarity within the scope of the EU Charter of Fundamental Rights in the light of Order 182/2020 of the Italian Constitutional Court' (2020) 5 European Papers 1463.

57. Corte Costituzionale, Judgment 181/2024**,** GU 20/11/2024 no 47. Giuseppe Fransoni, 'Judgment no. 181/2024 of the Italian Constitutional Court: Harmonies and dissonances in the constitutional jurisprudence on double preliminarity: Searching for the right "tone"' (2025) 1 The Italian Review of International and Comparative Law 99. In the Italian literature, see *ex multis* Patrizia De Pasquale, 'Il primato del diritto dell'Unione europea tra giudice comune e Corte costituzionale' (2025) 2 Unione europea e diritti 213.

marginalization of the role of ordinary courts in ensuring the immediate effectiveness of EU law through disapplication.[58] While confirming that, in a dual preliminarity scenario, it is for the ordinary court to decide whether to disapply or raise a question of constitutionality, the ICC emphasized that the *erga omnes* effects stemming from the declaration of unconstitutionality of a national provision contrary to EU law (including provisions with direct effect) reinforce the legal certainty, and thus ultimately represent 'an additional safeguard' for the primacy of EU law. Yet, that 'additional safeguard' can only arise where constitutional review does not operate as an alternative to disapplication, but rather represents an additional remedy complementing disapplication.[59] Moreover, the ICC's approach may be problematic from an EU law standpoint insofar as its involvement undermines the role played by disapplication and preliminary ruling to ensure the effectiveness of EU law.[60]

It could be argued that the SCO designation represents a typical scenario of dual preliminarity, since it affects constitutional rights. However, in the view of the authors here, the SCO designation and its judicial review are governed by EU law provisions with direct effect (Article 37 and Annex I of the Directive and Article 47 of the Charter). The 'proximity'[61] with EU law thus suggests giving priority to remedies available under EU law. Accordingly, any conflicting national provision must be disapplied and any interpretative question must be primarily referred to the Court of Justice, whose judgments have *erga omnes* effect across all Member

58. Chiara Amalfitano, 'Tutto cambia perché nulla cambi? L'incerto superamento del modello Granital' (2025) 3 Osservatorio sulle fonti 23.

59. Roberto Mastroianni, 'Un anno di "tono costituzionale": alcune riflessioni sulla giurisprudenza costituzionale successiva alla sentenza n. 181 del 2024 in tema di rapporti tra ordinamenti' (2025) Osservatorio sulle fonti 611.

60. As recalled by Mastroianni, when the issue of legal certainty was brought before the Court, the latter upheld the national court's power to disapply any national provision conflicting with EU law having direct effect, if necessary, after referring a preliminary ruling to the Court of Justice. The author specifically refers to C-430/21 *RS (Effects of the decisions of a constitutional court)* EU:C:2022:99 [54], where the Court stated that the national court's obligation to fully apply any provision of EU law with direct effect is 'essential in order to ensure the full application of EU law in all Member States, as required by Article 19(1) TEU'; accordingly, EU law precludes any national rule or practice that prevents a national court called on to apply EU law from doing 'everything necessary' to set aside national rules impeding 'full force and effect' of directly effective EU law [62] (emphasis added). Moreover, although in Joined Cases C-188/10 & C-189/10 *Aziz Melki and Sélim Abdeli* EU:C:2010:363 [57], the Court found a system of mandatory prior constitutional control compatible with art 267 TFEU, it made this conditional on preserving the ordinary courts' power to disapply conflicting national provisions and refer questions to the Court of Justice 'at whatever stage of the proceedings they consider appropriate'; Mastroianni (n 59). See also, more recently, C-56/25 *MA* EU:C:2026:87 [42].

61. Mastroianni (n 59) 582.

States and thus ensure the uniform application of EU law. EU judicial interaction techniques do not preclude a subsequent constitutional challenge, both to complement the disapplication of the national provision as an 'additional safeguard' and to enable the ICC to rule on any remaining doubts as to whether the solution adopted by the Court of Justice is compatible with Italian constitutional standards.[62] Notably, in the event that any contrast arises, the ICC would be wise to enter into further dialogue with the Court of Justice with a view to prompting it to reconsider its original solution. Rather than adopting a confrontational approach, the ICC could engage in constructive dialogue with the Court of Justice on the *Taricco* model,[63] by inviting it to interpret EU law 'in harmony' with the constitutional traditions common to the Member States and, in particular, with the constitutional protection afforded to the right to asylum under the Italian Constitution.[64]

5.5. The legacy of Alace

Although the legal framework governing the SCO regime is set to undergo significant changes – notably, by allowing partial designations at both Union and national level – the *Alace* judgment will have far-reaching implications for the future. Four elements deserve particular attention.

First, as noted in Section 3, the Advocate General identified a set of conditions that subjective exclusions must satisfy in order to be compatible with EU law. In particular, they must comply with the principle of proportionality and ensure the attainment of the objectives pursued by the EU legislature through the SCO mechanism. This implies that, first, the excluded categories must be clearly identified, so as to enable the competent authorities to immediately distinguish the persons concerned and examine their applications under the ordinary procedure; and second, the exceptions must be confined to a relatively limited number of persons. Otherwise, the third country concerned could no longer be regarded as genuinely safe and its designation as an SCO would not be 'reasonable'[65] in light of the safety criteria laid down in Annex I to the Directive.

62. It is likely that the ICC will be called on to assess potential conflicts raised by the new EU law provisions under the New Pact. See on this Favilli and Marin, 'Il controllo giurisdizionale' (n 14).

63. Case C-42/17 *MAS and MB* EU:C:2017:936.

64. Lucia Serena Rossi, 'Un dialogo da giudice a giudice. Rinvio pregiudiziale e ruolo dei giudici nazionali nella recente giurisprudenza della Corte di giustizia' (2022) Quaderni AISDUE 50; the author specifically refers to art 52(4) of the Charter.

65. Opinion, point 92.

Despite the Court having ruled otherwise on this point, the Advocate General's Opinion will likely play an important role in interpreting the problematic notion of 'clearly identifiable categories of persons' under the new APR. It is perhaps not coincidental that the Advocate General emphasized that broad subjective exclusions would render the designation contrary, first, to the principle of proportionality and, second, to the Member States' obligation 'to ensure that the legal and political situation in the country concerned is representative of a democratic system under which the general population enjoys lasting protection against the risk of persecution or serious harm'.[66] The latter requirement remains relevant under the APR, which continues to refer to the 'general political circumstances' of the country concerned. Similarly, the principle of proportionality is a general principle of EU law whose applicability is not confined to the current Directive. The parameters identified by the Advocate General may thus be partially extended to *Alheto* when the Court will be called on to interpret the notion of 'clearly identifiable categories of persons'.

Second, *Alace* has arguably added an important building block to the case law on the scope of judicial review of the rejection decision. In *Alace*, the Court, in line with *CV*, held that the full and *ex nunc* examination to be carried out by national courts under Article 46(3) of the Directive must also cover the procedural aspects of the application, including the designation of a third country as an SCO. This statement relies on a broad interpretation of the Court's previous case law, and notably the *Alheto*[67] judgment, already applied in *CV* and then confirmed by the Grand Chamber in *Alace.* Yet, in *Alheto*, judicial review was limited to the admissibility of the application, whereas in *CV* and *Alace*, the Court extended its scope to any procedural issue. Since that interpretation is grounded in the wording of Article 46(3), which is reproduced identically in Article 67(3) of the APR, it follows that, even within the new legal framework, the scope of judicial review may cover any procedural question – and not only those related to the SCO mechanism. This could have significant future implications. Since the new regulation introduces additional grounds for border and accelerated procedures, whether one of those grounds is met is a 'procedural issue' subject to judicial review under Article 67 of the APR.

Third, *Alace* may have relevant repercussions on the functioning of the SCO mechanism under the new regulation. In this ruling, the Court went beyond its approach in *CV* by holding that both the applicant and the national court must have full access to the sources underlying the national

66. Opinion, point 90.
67. *Alheto* (n 39).

designation. According to the Court, this safeguard is essential to the effective judicial review of the legality of the designation as guaranteed by Article 46(3) of the Directive (replicated in Article 67(3) of the APR) and Article 47 of the Charter. It follows that, under the new regime, transparency must be ensured both in relation to national SCO designations and the EU common list. So far, this does not seem to be the case, since the country reports drafted by the European Union Agency for Asylum and underpinning the designations of the EU SCO list under the APR have not been made public.[68]

Finally, in *CV* and *Alace*, the Grand Chamber confirmed the power of national courts to review the compliance of the SCO designation with EU law requirements. In the aftermath of *Alace*, the most recent legislative developments have been seen as attempts to limit the scope of national judicial review on SCO lists.[69] In fact, the amended version of the APR adopted in February 2026 establishing a Union SCO list specifies in its Preamble that 'in the context of national judicial review' the applicant's individual situation '[…] should be the main purpose of that assessment. In accordance with the Treaties, the Court of Justice of the European Union is competent to rule on any doubts on the validity of a designation of a third country as a safe country of origin at Union level'.[70] While the recital may well reflect the legislature's restrictive approach to judicial review,[71] the authors of this annotation feel that it will have no impact on national courts' review power. First, the quoted passage of the Preamble expressly refers to the EU common list established under Article 62 of the APR and does not extend to national lists. Second, a recital only serves an interpretative function and cannot override the principle of national judicial review of SCO designations, which the Court has grounded in the right to an effective remedy enshrined in Article 47 of the Charter.

Properly understood, the recital thus merely states that the Court of Justice, and not the national courts, has jurisdiction over the review of the EU SCO list. Such a limitation on national judicial review is nothing new

68. In this sense, see Peers (n 18) and Emilio De Capitani, 'Come un pugno sul tavolo: il caso delle nuove norme europee in materia di "Paesi sicuri"' (2026) Eurojus 1.

69. Steve Peers, 'Asylum Pact 2.0: the EU amends the rules on "safe third countries" and "safe countries of origin"' (*EU Law Analysis*, 23 February 2026) <eulawanalysis.blogspot.com/2026/02/asylum-pact-20-eu-amends-rules-on-safe.html>.

70. Preamble, Recital 5 APR (n 16).

71. Such an intention clearly filters in the original version of the amendment proposed by the European Parliament: '[…] national judicial review should examine the detailed evidence regarding an applicant's individual situation justifying […] and not the designation as such.' Peers (n 68).

and derives from settled case law. In line with the *Foto-Frost* principle, the Court of Justice has the 'exclusive jurisdiction' to declare void an EU act,[72] such as the Union SCO list. However, where the parties challenge the validity of an EU act, the national court may examine its validity and, if it considers the pleas of invalidity to be unfounded, reject them and conclude that the act is valid, since in so doing, it does not call the validity of the act into question.[73] Under the new legislative framework, a combined reading of *Foto-Frost* and *Alace* implies that the national court hearing an appeal against a decision rejecting an application from a third country qualified as an SCO under the EU list must examine the validity of that country's designation. However, in the event that a country designated as safe at Union level fails to meet the relevant safety or transparency criteria, national judges must – and not merely may – refer a question of validity to the Court. In other words, the scope of judicial review exercised by national courts in relation to the EU common list does not differ from that applicable to national designations; what differs is the outcome of that review. Under the *Foto-Frost* principle, a national judge is only precluded from declaring the list's invalidity on their own. A review requires the involvement of the Court of Justice by means of a preliminary reference on validity in order to ascertain whether the regulation establishing the list is compatible with EU primary law; notably, the principle of non-refoulement (Article 78 TFEU and Article 19(2) of the Charter), the prohibition of torture and inhuman or degrading treatment and the right to asylum (Articles 4 and 18 of the Charter).[74]

6. Conclusions

Despite its undeniable political resonance, *Alace* is not a disruptive judgment, nor is it an example of judicial encroachment on the prerogatives of national executives and legislatures. Quite the opposite: the Court proceeds in continuity with its settled case law and reaches conclusions that are, in substance, markedly deferential to legislative choices.

Yet the judgment is far from insignificant. It stands out for at least three reasons. First, it firmly re-anchors the SCO designation and its

72. Case 314/85 *Foto-Frost v Hauptzollamt Lübeck-Ost* EU:C:1987:452 [17].
73. *Foto-Frost* (n 72) [14].
74. Marcella Ferri, 'Il controllo sulla legittimità della lista comune dell'Unione sui paesi di origine sicuri: tra eredità giurisprudenziali più che mai attuali e prospettive di evoluzione' (2026) 2 Diritto, Immigrazione e Cittadinanza 24.

review in the constitutional principles of the EU legal order. By relying on effective judicial protection, direct effect and primacy, the Court strengthens the normative foundations of judicial review in this field and leaves no room for ambiguity: the uniform and effective application of EU law presupposes that national courts are empowered to review the legality of SCO designations. Second, the judgment forms part of a broader judicial saga involving both European and Italian courts, which is far from over. Two preliminary references concerning the compatibility of the Italy-Albania Protocol are currently pending,[75] and the application of the New Pact on Asylum and Migration will not settle the matter. On the contrary, the new legislative framework is likely to generate even more intricate questions of interpretation and validity, potentially drawing both the Court of Justice and the ICC into further dialogue.[76] Third, and relatedly, despite the forthcoming legislative changes, *Alace* sketches a roadmap for the future. It provides the Court with an opportunity to consolidate its constructive dialogue with national courts and safeguard their role as a pillar of the EU legal order.

On a deeper level, *Alace* exposes the tensions inherent in a multilevel legal order when systemic dysfunction produces heterogeneity, fragmentation and normative divergence. A paradigmatical example is the duty of disapplication, which should not be seen as a systemic instrument of alignment, but rather as a safety valve to resolve conflicts between EU and national law. Yet divergences are a matter for the legislature to solve. In this sense, the Court carefully sets the boundaries between judicial intervention and the legislature's prerogative. This is particularly clear in its treatment of the new APR: the judiciary must defer to the choices made by the legislators, which can result in different outcomes over time. Any attempt to change them by judicial interpretation, such as by bringing forward the date of application, would constitute an encroachment on legislative prerogatives and thus of the rule of law.

75. Joined Cases C-706/25 & C-707/25 *Questura di Roma v SG and JA [Comeri and Sidilli]* EU:C:2026:474, Opinion of AG Medina; Case C-414/25 *Ministero dell'Interno, Questura di Roma v SH and AH* EU:C:2026:334, Opinion of AG Emiliou. In her Opinion in *Comeri*, AG Medina observed that Member States remain free to locate their facilities in Albanian territory without encroaching on the exclusive competence of the European Union, yet they must observe the guarantees provided for by EU law in asylum matters. In this specific case, the Protocol and national implementing legislation are likely to affect or alter the minimum procedural guarantees provided for by EU law. In a similar position, in the *Sedrata* case, AG Emiliou advised the Court to consider the Protocol and related Italian legislation to be compatible with EU law provided that migrants' individual rights and guarantees under the European asylum system are fully maintained.

76. Cortese (n 21) 20.

In this sense, *Alace* is a renewed commitment to constructive collaboration between EU and national courts. By restating foundational principles, the Court reinforces both the authority of EU law and the limits of judicial power, safeguarding the structural equilibrium of the EU legal order at a moment of acute political and normative strain.

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