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Subject:	Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 - Compilation of replies

Delegations will find attached a compilation of replies from Member States on the Screening Regulation.

WRITTEN COMMENTS SUBMITTED BY THE MEMBER STATES

**Proposal for a Regulation of the European Parliament and of the Council
introducing a screening of third country nationals at the external borders and
amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and
(EU) 2019/817.**

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BELGIUM

Allow us to put forward some general remarks:

BE is in favour of the principle of a screening at the external borders and the territory. It is crucial that coherence is ensured between the screening regulation and other proposals within the Asylum and Migration Pact with a view to an efficient, coherent and sustainable asylum and migration policy.

For BE it is important to underline that all migrants (not only those applying for international protection) are protected against refoulement and need to be treated in a dignified manner in line with the standards laid down in the European Convention of Human Rights, the EU Charter, the Geneva Convention and articles 4 and 7 of the Schengen Border Code.

BE would like to stress that the screening cannot lead to a delay in the application for international protection. As such we plead for a direct application of the asylum acquis, particularly the Reception Conditions Directive, to persons who apply for international protection, regardless of how he or she has reached the EU. Due attention should be paid to the specific rights and needs of persons with special vulnerabilities.

Recital 12

We thank you for having included our suggestion regarding the fact that detention should be necessary, proportionate and subject to an effective remedy, in line with EU and international law. It was an important point for BE to have this principle explicitly mentioned in the recital.

Article 7 and recital 23

Broad monitoring of the screening in every MS is a very important aspect for BE and we believe that it forms an essential part of the screening regulation. BE pleads to have an explicit reference to the fundamental rights and freedoms in the corpus of the text. BE underlines the important role of the Fundamental Rights Agency, as well as other independent organizations in the monitoring of the screening. BE cannot accept any further weakening of the text as regards monitoring and would suggest to add a reference that monitoring includes periodic reporting.

Article 8

For BE, it is important that the migrant receives information about the screening in a language that he or she understands. This can happen in writing, however, it should be verified that persons can indeed understand this information. Where needed, the migrant should receive the information orally. We would like to stress the importance that the migrant is informed about the possibility to apply for asylum.

Article 9

We plead that a medical check is always needed at the external borders, exceptions to this should only occur in exceptional circumstances and it is up to qualified medical personnel to decide on this. A vulnerability check should be mandatory, with no exceptions. BE welcomes the fact that no medical check is needed in the screening foreseen in art. 5.

BULGARIA

Recitals

- (1) The Schengen area was created to achieve the Union's objective of establishing an area without internal ~~frontiers~~ borders in which the free movement of persons is ensured, as set out in Article 3(2) of the Treaty on European Union (TEU). The good functioning of this area relies on mutual trust between the Member States and efficient management of the external border.
- (2) The rules governing border control of persons crossing the external borders of the Member States of the Union are laid down in Regulation (EU) 2016/399 of the European Parliament and of the Council (Schengen Borders Code)¹ as adopted under Article 77(2)(b) of the Treaty on the Functioning of the European Union (TFEU). To further develop the Union's policy with a view to carrying out checks on persons and efficiently monitoring the crossing of external borders referred to in the first paragraph of Article 77 TFEU, additional measures should address situations where third-country nationals manage to avoid border checks at the external borders in accordance with Article 5(1) of Regulation (EU) 2016/399, or where third-country nationals are disembarked following search and rescue operations as well as where third-country nationals ~~request~~ **make an application** for international protection at a border crossing point without fulfilling entry conditions, **and third country nationals who make an application for international protection and benefit from an authorisation to enter on humanitarian grounds or international obligations under Article 6(5)c of Regulation (EU) 2016/399.** The present regulation complements and specifies Regulation (EU) 2016/399 with regard to those three sets of situations.
- (3) It is essential to ensure that in those three sets of situations, the third country nationals are screened, in order to facilitate a proper identification and to allow for them being referred efficiently to the relevant procedures which, depending on the circumstances, can be procedures for international protection or procedures respecting Directive 2008/115/EC of the European Parliament and of the Council (the "Return Directive")². The screening should seamlessly complement the checks carried out at the external border or compensate for the fact that those checks have been circumvented by the third country nationals when crossing the external border.

Commented [S1]: Bulgaria enters scrutiny reservation on the recitals and reservation on substance to the recitals referring to the acts linked with international protection

¹ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p.1.

² Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

- (4) Border control is in the interest not only of the Member States at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal migration, ~~smuggling~~ and trafficking of human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations. As such, measures taken at the external borders are important elements of a comprehensive approach to migration, allowing to address the challenge of mixed flows of irregular migrants and persons ~~seeking in need of~~ international protection.
- (5) In accordance with Article 2 of Regulation (EU) 2016/399, border control consists of border checks carried out at the border crossing points and border surveillance, which is carried out between the border crossing points, in order to prevent third-country nationals from border crossing not authorised under Article 5 of Regulation (EU) 2016/399 and thereby circumventing border checks. In accordance with Article 13 of Regulation (EU) 2016/399 a person who has crossed a border in an unauthorised manner and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC. In accordance with Article 3 of Regulation (EU) 2016/399, border control should be carried out without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.
- (6) Border guards are often confronted with third-country nationals who are requesting international protection without travel documents, both following apprehension during border surveillance and during checks at the border crossing points. Moreover, at some border sections the border guards are confronted with ~~large numbers of arrivals~~ mass influx of people at the same time. In such circumstances, it is particularly difficult to ensure that all relevant databases are consulted and to immediately determine the appropriate asylum or return procedure.
- (7) ~~In order to ensure a swift handling of third-country nationals at the external borders or within the territory of the Member States, who have not been subject to border checks at the external borders of the Member States, as well as those who have made an application for international protection at border crossing points or in transit zones, without fulfilling the entry conditions who try to avoid border checks or who request international protection at a border crossing point without fulfilling the entry conditions or who are disembarked following a search and rescue operation, it is necessary to provide a stronger framework for cooperation between the different national authorities responsible for border control, the protection of public health, the examination of the need for international protection and the application of return procedures.~~
- (8) In particular, the screening should help contribute to ensure that the third-country nationals concerned are referred to the appropriate procedures at the earliest stage possible and that the procedures are continued without interruption and delay. ~~At the same time, the screening should help contribute to counter the practice whereby some applicants for international protection abscond after having been authorised to enter the territory of a Member State based on their request for international protection, in order to pursue such requests applications in another Member State or not at all.~~

Commented [S2]: Thus written, the focus of this recital is on cooperation and coordination between national authorities, which does not correspond to the purpose and scope of the screening. We propose deletion.

Commented [S3]: Bulgaria is of the opinion that the screening will not help MSs to counter the practice of absconding, since there is no explicit obligation for national authorities to detain. The moment a person applies for international protection, he or she is directed to the appropriate procedure, in which case the rules of international protection acquis apply, not the screening. We do not see how the Regulation will help to counter the practice of applicants for international protection to abscond. In addition, we still have concerns with the phrase *authorised to enter* used in relation to asylum legislation. Asylum seekers are not authorized to enter but they are granted access to the territory.

- (9) With regard to those persons who apply for international protection, the screening should be followed by an examination of the need for international protection. It should allow to collect and share with the authorities competent for that examination any information that is relevant for the latter to identify the appropriate procedure for the examination of the application, thus speeding up that examination. Member States shall take due account of the state of the health and special needs of vulnerable persons. ~~The screening should also ensure that vulnerable persons with special needs are identified at an early stage, so that any special reception and procedural needs are fully taken into account in the determination of and the pursuit of the applicable procedure.~~
- (10) The obligations stemming from this Regulation should be without prejudice to the provisions concerning responsibility for examining an application for international protection regulated in Regulation (EU) No XX/XXX [Asylum and Migration Management Regulation].
- (11) This Regulation should apply to third-country nationals and stateless persons who are apprehended in connection with the unauthorised crossings of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14(1) and (3) of the Eurodac Regulation for reasons other than their age, as well as to persons who have been disembarked following search and rescue operations, regardless of whether they apply or not for international protection. This Regulation should also apply to those who seek international protection at the external border ~~crossing points or in transit zones~~ without fulfilling the entry conditions set out in Article 6 of Regulation (EU) 2016/399.
- (12) The screening should be conducted at any appropriate location designated by the Member State, or in proximity to the external border or, when this is not possible because there are no adequate facilities at the border or they are already occupied, in other locations, before the persons concerned are authorised to enter the territory. ~~The Member States should apply measures pursuant to lay down in their national law provisions to ensure to prevent the persons concerned remain at the disposal of the competent authorities for the duration of the screening, to prevent any risk of absconding and potential resulting security risks. are effectively prevented from entering the territory or absconding and to ensure these persons remain in the designated location during the screening.~~ In individual cases, where required, this may include detention, as well as other alternative measures that can ensure the same objective, subject to the national law regulating that matter. Detention should always be necessary, proportionate and subject to an effective remedy, in line with EU and international law. Screening within the territory should also be conducted in any appropriate location.
- (13) ~~Wherever it becomes clear during the screening that a third-country national subject to it fulfils the conditions of Article 6 of Regulation (EU) 2016/399, the screening should end and the third-country national concerned should be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5(3) of that regulation.~~

Commented [S4]: We have reservation on the use of the terms "special reception and procedural needs", as these are concepts related to the legislation in the field of international protection

Commented [S5]: In order to avoid mentioning the disputable phrase transit zones we propose to refer just to the external border without specifying BCPs or transit zones. Both of them are at the external border.

Commented [S6]: The focus should fall on the measures for preventing secondary movements not on the locations. We believe that as additional burden for the front line MSs is foreseen a balanced approach is needed.

Commented [S7]: This proposal is to reflect the proposal under Article 6 (2).

Commented [S8]: Screening is conducted to persons who do not fulfil the entry conditions. This text is redundant.

- (14) In view of the purpose of the derogation referred to in Article 6(5) of Regulation (EU) 2016/399, persons whose entry has been authorised by a Member State under that provision in an individual decision should not be submitted to the screening despite the fact that they do not fulfil all entry conditions, **unless they make an application for international protection.**
- (15) All persons subject to the screening should be submitted to checks, **including, where appropriate, interviews,** in order to establish **or verify** their identity and to ascertain that they do not pose a ~~threat to internal security or public health~~ **security risk or a threat to public health.** In the case of persons ~~requesting~~ **making an application for** international protection at border crossing points, the identity and security checks carried out in the context of border checks should be taken into account to avoid duplication.
- (16) On completion of the screening, the third-country nationals concerned should be referred to the relevant procedure to establish responsibility for examining an application for and to assess the need for international protection **respecting the [Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU],** or be made subject to procedures respecting **recast** Directive 2008/115 (return directive), as appropriate. ~~The relevant information obtained during the screening should be provided to the competent authorities to support the further assessment of each individual case, in full respect of fundamental rights. The procedures established by Directive 2008/115 should start applying only after the screening has ended. Article 26 and 27 of the Asylum Procedures Regulation should apply only after the screening has ended. This should be without prejudice to the fact that the persons applying for international protection at the moment of apprehension, in the course of border control at the border crossing point or during the screening, should be considered applicants.~~
- (17) The screening could also be followed by relocation under the mechanism for solidarity established by Regulation (EU) XXX/XXX [Asylum and Migration Management] where a Member State is contributing to solidarity on a voluntary basis or the applicants for international protection are not subject to the border procedure pursuant to Regulation (EU) No. XXX/XXX (Asylum Procedures Regulation), or under the mechanism addressing situations of crisis established by Regulation (EU) XXX/XXX [Regulation on situations of crisis].

(18) In accordance with Article 12 of Regulation (EU) 2016/399, the fulfilment of entry conditions and the authorisation of entry are expressed in an entry stamp in a travel document. The absence of such entry stamp or the absence of a travel document may therefore be considered as an indication that the holder does not fulfil the entry conditions. With the start of the operation of the Entry/Exit System leading to substitution of the stamps with an entry in the electronic system, that presumption will become more reliable. Member States should therefore apply the screening to third-country nationals who are already within the territory and who are unable to prove that they fulfilled the conditions of entry into the territory of the Member States. The screening of such third-country nationals is necessary in order to compensate for the fact that they presumably managed to evade entry checks upon arrival in the Schengen area and therefore could have not been either refused entry or referred to the appropriate procedure following screening. Applying the screening could also help in ascertaining, through the consultation of the databases referred to in this Regulation, that the persons concerned do not pose a ~~threat to internal security~~ security risk. By the end of the screening within the territory, the third-country nationals concerned should be subject to a return procedure or, where they apply for international protection, to the appropriate asylum procedure. Submitting the same third-country national to repeated screenings should be avoided to the utmost extent possible.

(18a) ~~If an illegally staying third country national is apprehended or intercepted at or in the immediate vicinity of an internal border, and there is no indication that the person has crossed the external border in an authorized manner or that the person has already been subject to screening, the apprehending Member States may not apply the screening, if that person is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Regulation~~

~~The Member State which has taken back the third country national should apply the screening. However, in this case, the transfer of the third country national has to occur immediately after the apprehension or interception, in order to ensure that screening should start without delay.~~

(18b) This Regulation is without prejudice to provisions of national law covering the identification of third-country nationals suspected of staying in a Member State illegally in order to research, within a brief but reasonable time, the information enabling a determination of the illegality or legality of the stay.

(18c) ~~Without prejudice to the rules on border control applicable at the internal borders of the Member States where a decision to lift such controls has not been taken yet, screening of third country nationals apprehended in connection with unauthorised crossing of such internal borders where the controls have not yet been lifted should follow the rules established by this Regulation for screening within the territory and not the rules established for screening at the external borders~~

Commented [S9]: This proposal is to reflect the proposal under Article 5 (2). We prefer to stick to simple rules: the screening will be performed by the authorities that apprehended the person.

Commented [S10]: See comment 8.

(19) The screening should be completed as soon as possible, and should not exceed 5 days ~~where it is conducted at the external border and 3 days where it is conducted within the territory of a Member State~~. Any extension of the 5 days' time limit should be reserved for exceptional situations at the external borders, where the capacities of the Member State to handle screenings are exceeded for reasons beyond its control such as crisis situations referred to in Article 1 of Regulation XXX/XXX [crisis proposal].

(20) The Member States should determine appropriate locations for the screening in the territory, ~~at or in proximity to the external border or, if not possible because there are no adequate facilities at the border or they are already occupied, in any other location~~, taking into account geography and existing infrastructures, ensuring that apprehended third-country nationals as well as those who present themselves at a border crossing point can be swiftly submitted to the screening. The tasks related to the screening may be carried out in hotspot areas as referred to in point (23) of Article 2 of Regulation (EU) 2019/1896 of the European Parliament and of the Council³. ~~For the screening within the territory Member States should determine appropriate locations in the territory.~~

Commented [S11]: The focus should fall on the measures for preventing secondary movements not on the locations. We believe that as additional burden for the front line MSs is foreseen a balanced approach is needed.

(21) In order to achieve the objectives of the screening, close cooperation should be ensured between the competent national authorities referred to in Article 16 of Regulation 2016/399, those referred to in Article 5 of the [Asylum Procedures Regulation] as well as those responsible for carrying out return procedures respecting Directive 2008/115. Child protection authorities should also be closely involved in the screening wherever necessary to ensure that the best interests of the child are duly taken into account throughout the screening. Member States should be allowed to avail themselves of the support of the relevant agencies, in particular the European Border and Coast Guard Agency and the [European Union Agency for Asylum], within the limits of their mandates and upon request by the Member State concerned. Member States should involve the national Rapporteurs for Anti-trafficking or equivalent mechanisms wherever the screening reveals facts relevant for trafficking in line with Directive 2011/36/EU of the European Parliament and of the Council⁴.

(22) When conducting the screening, the competent authorities should comply with the Charter of Fundamental Rights of the European Union and ensure the respect for human dignity and should not discriminate against persons on grounds of sex, racial, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, disability, age or sexual orientation. Particular attention should be paid to the best interests of the child.

³ Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard, OJ L 295, 14.11.2019, p. 1.

⁴ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 15.4.2011, p. 1.

- (23) In order to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening, each Member State should ~~establish~~ **provide for** a monitoring mechanism and put in place adequate safeguards for the independence thereof. **For this purpose Member States may resort to already existing national fundamental rights monitoring mechanisms which foresee safeguards that ensure their independences..** The monitoring mechanism should cover in particular the respect for fundamental rights ~~in relation to the screening~~, as well as the respect for the applicable EU and international law in relation to the screening, ~~national rules regarding detention and compliance with the principle of non-refoulement as referred to in Article 3(b) of Regulation (EU) 2016/399~~. The Fundamental Rights Agency should establish general guidance as to the establishment and the independent functioning of such monitoring mechanism. Member States should furthermore be allowed to request the support of the Fundamental Rights Agency for developing their national monitoring mechanism. Member States should also be allowed to seek advice from the Fundamental Rights Agency with regard to establishing the methodology for this monitoring mechanism and with regard to appropriate training measures. Member States should also be allowed to invite relevant and competent national, international and non-governmental organisations and bodies to participate in the monitoring. The independent monitoring mechanism should be without prejudice to the monitoring of fundamental rights provided by the European Border and Coast Guard Agency's fundamental rights monitors provided for in Regulation (EU) 2019/1896. The Member States should investigate allegations of the breach of the fundamental rights during the screening, including by ensuring that complaints are dealt with expeditiously and in an appropriate way.
- (24) **As soon as possible and, at latest** by the end of the screening, the authorities responsible for the screening should fill in a ~~de-briefing screening form~~ **with all relevant information gathered**. The form should be transmitted **by any appropriate means, including digital tools**, to the authorities examining applications for international protection or to the authorities competent for return ~~procedures~~ – depending on whom the individual is referred to. ~~In the former case, the authorities responsible for the screening should also indicate any elements which may seem to be relevant for determining whether the competent authorities should submit the application of the third-country national concerned to an accelerated examination procedure or to the border procedure.~~ **The end of screening should not prevent authorities, where appropriate, to continue actions to determine the identity of the person concerned and assess possible security risks.**
- (25) The biometric data taken during the screening should, together with the data referred to in Articles [12, 13, 14 and 14a] of the Eurodac Regulation be transmitted to Eurodac by the competent authorities in accordance with the deadlines provided for in that Regulation.

- (26) A preliminary health ~~examination~~ **check** should be carried out on all persons submitted to the screening at the external borders with a view to identifying persons in need of immediate care or requiring other measures to be taken, for instance isolation on public health grounds. ~~The specific needs of minors and vulnerable persons should be taken into account.~~ If it is clear from the circumstances that such ~~examination~~ **check** is not needed, in particular because the overall condition of the person appears to be very good, the ~~examination-check~~ should not take place and the person concerned should be informed of that fact. The preliminary health ~~examination~~ **check** should be carried out by ~~the health authorities~~ **qualified medical staff** of the Member State concerned. ~~With regard to third-country nationals apprehended within the territory, the preliminary medical examination should be carried out where it is deemed necessary at first sight.~~
- (26a) **A vulnerability check should be carried out to identify any indication of vulnerability. The specific needs of minors and vulnerable persons should be taken into account.**
- (27) During the screening, all persons concerned should be guaranteed a standard of living complying with the Charter of Fundamental Rights of the European Union and have access to emergency health care and essential treatment of illnesses. Particular attention should be paid to individuals with vulnerabilities, such as pregnant women, elderly persons, single parent families, persons with an immediately identifiable physical or mental disability, persons visibly having suffered psychological or physical trauma and unaccompanied minors. In particular, in case of a minor, information should be provided in a child-friendly and age appropriate manner. All the authorities involved in the performance of the tasks related to the screening should **report any situation of vulnerabilities observed or reported to them**, respect human dignity, privacy, and refrain from any discriminating actions or behaviour.
- (28) Since third-country nationals subject to the screening may not carry the necessary identity and travel documents required for the legal crossing of the external border, an identification **or verification** procedure should be provided for as part of the screening.

- (29) The Common Identity Repository (“CIR”) was established by Regulation (EU) 2019/817 of the European Parliament and of the Council (Interoperability Regulation)⁵ to facilitate and assist in the correct identification of persons registered in the Entry/Exit System (“EES”), the Visa Information System (“VIS”), the European Travel Information and Authorisation System (“ETIAS”), Eurodac and in the European Criminal Records Information System for third country nationals (“ECRIS-TCN”), including of unknown persons who are unable to identify themselves. For that purpose, the CIR contains only the identity, travel document and biometric data recorded in EES, VIS, ETIAS, Eurodac and ECRIS-TCN, logically separated. Only the personal data strictly necessary to perform an accurate identity check is stored in the CIR. The personal data recorded in the CIR is kept for no longer than strictly necessary for the purposes of the underlying systems and should automatically be deleted where the data are deleted from the underlying systems. Consultation of the CIR enables a reliable and exhaustive identification of persons, by making it possible to consult all identity data present in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in one go, in a fast and reliable manner, while ensuring a maximum protection of the data and avoiding unnecessary processing or duplication of data.
- (30) In order to establish the identity of the persons subject to the screening, a verification should be initiated in the CIR in the presence of the person during the screening. During that verification, the biometric data of the person should be checked against the data contained in the CIR. Where the biometric data of a person cannot be used or if a query with that data fails, the query could be carried out with identity data of the person in combination with travel document data, where such data are available. In accordance with the principles of necessity and proportionality, and where the query indicates that data on that person are stored in the CIR, Member State authorities should have access to the CIR to consult the identity data, travel document data and biometric data of that person, without the CIR providing any indication as to which EU information system the data belong to.
- (31) Since the use of the CIR for identification purposes has been limited by Regulation (EU) 2019/817 to facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in situations of police checks within the territory of the Member States, that Regulation needs to be amended to provide for the additional purpose of using the CIR to identify persons during the screening established by this Regulation.
- (32) Given that many persons submitted to the screening may not carry any travel documents, the authorities conducting the screening should have access to any other relevant documents held by the persons concerned in cases where the biometric data of such persons are not usable or yield no result in the CIR. The authorities should also be allowed to use data from those documents, other than biometric data, to carry out checks against the relevant databases.

⁵ Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, OJ L 135, 22.5.2019, p. 27.

- (33) The identification of persons during border checks at the border crossing point and any consultation of the databases in the context of border surveillance or police checks in the external border area by the authorities who referred the person concerned to the screening should be considered as part of the screening and should not be repeated, unless there are special circumstances justifying such repetition.
- (34) In order to ensure uniform conditions for the implementation of Articles 11(54) and 12(58) of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁶. For the adoption of relevant implementing acts, the examination procedure should be used.
- (35) The screening should also assess whether the entry of the third-country nationals into the Union could pose a **security risk** ~~threat to internal security or to public policy~~.
- (36) As the screening concerns persons present at the external border without fulfilling entry conditions, or disembarked after a search and rescue operation, the security checks as part of the screening should be at least of a similar level as the checks performed in respect of third country nationals that apply on beforehand for an authorisation to enter the Union for a short stay, whether they are under a visa obligation or not.
- (37) For third-country nationals who are on the basis of their nationality exempt from the visa requirement under Regulation (EU) 2018/1806 of the European Parliament and the Council⁷, Regulation (EU) 2018/1240 of the European Parliament and of the Council⁸ (ETIAS Regulation) provides that they have to apply for a travel authorisation to come to the EU for short stay. Before receiving that travel authorisation, the persons concerned are submitted to security checks of the personal data they submit against a number of EU databases – the Visa Information System (VIS), the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), the Europol data processed for the purpose referred to in Article 18(2)(a) of Regulation (EU) 2016/794⁹, ECRIS-TCN¹⁰ – as well as Interpol’s Stolen and Lost Travel Document database (SLTD) and Travel Documents Associated with Notices database (Interpol TDAWN).

⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing power (OJ L 55, 28.2.2011, p. 13).

⁷ Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39).

⁸ Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

⁹ Regulation (EU) 2016/794 of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114)

¹⁰ Regulation (EC) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement

- (38) As to third-country nationals who are subject to the visa requirement under Regulation (EU) 2018/1806, they are submitted to security checks against the same databases as visa-free third country nationals, pursuant to Regulation (EU) 810/2009 and Regulation (EU) 767/2008 before a visa is issued.
- (39) It follows from the reasoning developed in recital (36) that as regards persons subject to the screening, automated verifications for security purposes should be carried out against the same systems as is provided for applicants for a visa or for a travel authorisation under the European Travel Information and Authorisation System: the VIS, EES, ETIAS, SIS, ECRIS-TCN, Europol and Interpol's SLTD and TDAWN. Persons submitted to the screening should also be checked against ECRIS-TCN as regards persons convicted in relation to terrorist offences and other forms of serious criminal offences, Europol data referred to in the preceding recital 38, the Interpol's Lost and Stolen Travel Documents database and Travel Documents Associated with Notices databases (TDAWN).
- (40) Those checks should be conducted in a manner that ensures that only data necessary for carrying out the security checks is retrieved from those databases. With regard to persons who have ~~requested~~ **made an application for** international protection at a border crossing point, the consultation of databases for the security check as part of the screening should focus on the databases that were not consulted during the border checks at the external border, thus avoiding repeated consultations.
- (41) Where justified for **its purpose**, ~~the purpose of the security check~~, the screening could also include verification of objects in the possession of third-country nationals, in accordance with national law. Any measures applied in this context should be proportionate and should respect the human dignity of the persons subject to the screening. The authorities involved should ensure that the fundamental rights of the individuals concerned are respected, including the right to protection of personal data and freedom of expression.
- (42) Since access to EES, ETIAS, VIS and ECRIS-TCN is necessary for the authorities designated to carry out the screening in order to establish whether the person could pose a ~~threat to the internal security or to public policy~~ **security risk**, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226, Regulation (EU) 2018/1240 and Regulation (EC) No 2019/816, respectively, should be amended to provide for this additional access right which is currently not provided by those Regulations. In the case of Regulation (EU) No 2019/816, this amendment should for reasons of variable geometry take place through a different regulation than the present one.
- (43) The European search portal (ESP) established by Regulation (EU) 2019/817 should be used to carry out the searches against the European databases, EES, ETIAS, VIS and ECRIS-TCN **and Europol data**, for identification, **verification**, or for the purpose of security checks, as applicable.

the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1–26)

- (44) Since the effective implementation of the screening is dependent upon correct identification of the individuals concerned and of their security background, the consultation of European databases for that purpose is justified by the same objectives for which each of those databases has been established, that is to say, the effective management of the Union's external borders, the internal security of the Union and the effective implementation of the Union's asylum and return policies.
- (44a) **National databases can also be checked in this context whenever national law authorizes such queries.**
- (44b) **For the purposes of complying with the obligation to perform identity and security checks during the screening, Member States who do not yet apply some provisions of Schengen acquis in full and do not therefore have access to all Union systems and databases are responsible for the identity and security checks by carrying out searches only in those Union systems and databases to which they have access.**
- (45) Since the objectives of this Regulation, namely the strengthening of the control of persons ~~who are about to enter the Schengen area~~ **at the external borders** and their referral to the appropriate procedures, cannot be achieved by Member States acting alone, it is necessary to establish common rules at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (46) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (47) This Regulation constitutes a development of the provisions of the Schengen acquis, in which Ireland does not take part, in accordance with Council Decision 2002/192/EC¹¹; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

¹¹ Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

- (48) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC¹².
- (49) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC¹³.
- (50) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU¹⁴.
- (51) As regards Cyprus, Bulgaria, Romania and Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen acquis within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession,

¹² Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

¹³ Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

¹⁴ Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).

(51a) As regards Cyprus, Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which the Government of the Republic of Cyprus does not exercise effective control. Under this Regulation, although the line does not constitute an external border, checks are to be carried out on all persons crossing the line through an authorized or unauthorized crossing point with the aim to combat illegal immigration of third-country nationals and to detect and prevent any security risk. Therefore, it should be clarified that screening under Article 3 may also apply to third country nationals who are apprehended in connection with an unauthorized crossing of the line and to those who have made an application for international protection at the authorized crossing points.

Article 1

Subject matter ~~and scope~~

Commented [S12]: Bulgaria enters scrutiny reservation on the whole text and reservation on substance on Articles 1, 3, 4, 5, 6, 6a and 14 and on the texts referring to asylum.

In order to strengthen the external border control of persons at external borders, This Regulation establishes the screening of third country nationals, ~~at the external borders or within the territory of the Member States, who have crossed the border without fulfilling the entry conditions set out in Article 6 of Regulation (EU) 2016/399. not been subject to border checks at the external borders of the Member States, as well as those who have made an application for international protection at border crossing points or in transit zones, without fulfilling the entry conditions.~~

Commented [S13]: The effective control of EU's external borders is set out in the European Council Conclusions from 28 June 2018, as part of comprehensive approach to migration. Thus the purpose of the Regulation should be to strengthen the external border control. The phrase "persons at external borders" highlights the location where the screening should take place, an issue that is disputable. We believe that the control of external border is more important than the location of the screening. The screening will be applied to all TCNs who have crossed the border illegally, without fulfilling the entry conditions set out in Article 6 of SBC. This is the understanding of Article 3. We believe that since Article 3 specifies the scope of the Regulation it is not necessary to enter into details in Article 1. Thus the disputable issue with the phrase "transit zones" could be overcome.

~~of all third country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State and have crossed the external border in an unauthorised manner, of those who have applied for international protection during border checks without fulfilling entry conditions, as well as those disembarked after a search and rescue operation, before they are referred to the appropriate procedure.~~

~~The purpose of the screening shall be the strengthening of the control of persons who are about to enter the territory cross the external borders of the Member States without fulfilling the entry conditions, Schengen area as well as of persons illegally staying within the territory of the Member States and who have not been subject to border checks at the external borders, and their referral to the appropriate procedures.~~

~~The object objective of the screening shall be the identification of all third-country nationals subject to it and the verification against relevant databases that the those persons subject to it do not pose a security risk threat to internal security. The screening shall also entail health checks, where appropriate, to identify persons vulnerable and or in the need of immediate health care and as well as the ones posing a threat to public health, as well as vulnerability checks to identify vulnerable persons. Those checks shall contribute to referring such persons to the appropriate procedure.~~

~~The screening shall also be carried out within the territory of the Member States where there is no indication that third country nationals have been subject to controls at external borders.~~

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

1. ‘unauthorised crossing of the external border’ means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. ‘threat to public health’ means a threat ~~to public health~~ within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. ‘verification’ means the process ~~of comparing sets of data to establish the validity of a claimed identity (one to one check), as~~ referred to in Article 4 (5) ~~3 (1) (13) of the EES Regulation (EU) 2019/817 2017/2226;~~
4. ‘identification’ means the process ~~of determining a person’s identity including through a database search against multiple sets of data (one to many check), as~~ referred to in Article ~~3 4 (6) (1) (14) of the EES Regulation (EU) 2019/817 2017/2226;~~
5. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article 2 Point 5, of Regulation (EU) 2016/399;
6. ‘security risk’ means the risk ~~of a threat to public policy, internal security or international relations for any of the Member States, as~~ referred to in Article 3 (1) (6) of the ETIAS Regulation (EU) 2018/1240;
7. ~~‘terrorist offence’ means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;~~
8. ~~‘serious criminal offence’ means an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;~~

9. 'Europol data' means ~~personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794~~, as referred to in Article 4 (16) of the Regulation (EU) 2019/817 ~~Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240~~;
10. 'biometric data' means ~~fingerprint data or facial images or both~~, as referred to in Article 4 (11) of the Interoperability Regulation (EU) 2019/817;
11. 'Interpol databases' means ~~databases the Interpol Stolen and Lost Travel Document database (SLTD database) and the Interpol Travel Documents Associated with Notices database (TD4WN database)~~ as referred to in Article 4 (17) of the Interoperability Regulation (EU) 2019/817;
12. 'vulnerable persons' means ~~persons minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence~~ as referred to in Article 3 (9) of Directive 2008/115 EC;
13. 'screening authorities' means all competent authorities designated by national law to carry out one or more of the tasks under this Regulation ~~except for the health checks laid down in Article 9 (1)~~;
14. 'Search and Rescue Operations' means operations of search and rescue as referred in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979.
 15. ~~['family members' means those mentioned in Article 2 (g) of Regulation (EU) XXX/XXX (AMMR Regulation).]~~
 16. ~~['relatives' means those mentioned in Article 2 (h) of Regulation (EU) XXX/XXX (AMMR Regulation).]~~

Article 3

Scope Screening at the external border

1. This Regulation shall apply to all third-country nationals, ~~regardless of whether they have made an application applied~~ for international protection, who:
 - (a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14 (1) and (3) of Regulation (EU) 603/2013 for reasons other than their age, or
 - (b) are disembarked in the territory of a Member State following a search and rescue operation

Commented [S14]: This Article actually describes the scope of the Regulation. Since the issue linked to the locations is disputable, BG suggestion is to change the title of the Article in order to overcome it.

~~and do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.~~

Commented [S15]: Since this is moved to Article 1 as a general rule we believe that this text here is redundant.

~~This Regulation shall apply to all third country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State except third country nationals who are turned back or who are kept in custody, confinement or detention during the entirety of a period not exceeding 72 hours between apprehension and removal and for whom the Member State is not required to take the biometric data pursuant to Article 14 (1) and (3) of Regulation (EU) 603/2013 for reasons other than their age.~~

~~The screening shall apply to those persons regardless of whether they have applied for international protection.~~

2. This Regulation shall apply ~~The screening shall also apply~~ to all third-country nationals who have made an application ~~apply for international protection at~~ the external border ~~external border crossing points or in transit zones~~ and who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.
3. The screening is without prejudice to the application of Article 6 (5) of Regulation (EU) 2016/399, except the situation where the beneficiary of an individual decision issued by the Member State based on Article 6 (5)(c) of that Regulation is seeking international protection.

Commented [S16]: In order to avoid mentioning the disputable phrase „transit zones“ we propose to refer just to the external border without specifying BCPs or transit zones. Both of them are at the external border.

~~The screening shall also apply to all third country nationals who benefit from an authorisation to enter based on Article 6(5)(c) of Regulation (EU) 2016/399 and who are seeking international protection.~~

Article 3a – NEW

Commented [S17]: In principal, this new article is redundant. As it is drafted now we believe that this provision is breaching the TCN s fundamental rights as it postpones the execution of the right to access to asylum.

Relation with other legal instruments

1. ~~For third country nationals subject to the screening referred to in Article 3(1) (a) and (b), who have made an application for international protection~~
 - a) ~~the registration of the asylum application for international protection in accordance with of the common procedures of the Asylum Procedures Regulation is determined by [Article 26(2) and Article 27(5)] of that Regulation~~
 - b) ~~the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (Directive 2013/33/EU of the European Parliament and of the Council, laying down standards for the reception of applicants for international protection (recast)) is determined by [Article 2(x)] of that Directive at the end of the screening~~

~~2. For third country nationals subject to the screening referred to in Article 3(2) and Article 5, who have made an application for international protection~~

- ~~a) the registration of the application for international protection in accordance with the Asylum Procedures Regulation is determined by [Article 27 (1) (4)] of that Regulation~~
- ~~b) the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (Directive 2013/33/EU of the European Parliament and of the Council, laying down standards for the reception of applicants for international protection (recast)) is determined by [Article 3(1)] of that Directive.~~

3. ~~Without prejudice to the application of provisions on international protection, Return Directive 2008/115/EC or national provisions respecting Directive 2008/115/EC shall apply only after the screening has ended, except for the screening referred to in Article 5, where they shall apply in parallel with the screening referred to in that Article.~~

Article 4

Authorisation to enter the territory of a Member State

1. ~~During the screening, the persons referred to in Article 3, paragraphs 1 and 2, shall not be authorised to enter the territory of a Member State.~~

~~Member States shall lay down in their national law provisions to ensure that those persons shall remain at the disposal of the competent authorities at the external border or, if not possible, in other locations as referred to in Article 6 (1), for the duration of the screening to prevent any risk of absconding and potential resulting security risks.~~

2. ~~Where it becomes apparent during the screening that the third country national concerned fulfils the entry conditions set out in Article 6 of Regulation (EU) 2016/399, the screening shall be discontinued and the third country national concerned shall be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5 (3) of that Regulation.~~

~~The screening may also be discontinued when the third country national leaves the territory of the Member States, for the country of origin, residence or another third country they are accepted to which the third country national concerned voluntarily decides to return and where he or she is accepted.~~

Commented [S18]: We propose this Article to be deleted as it is redundant. It is clear that the person shall not be authorised to enter the territory due to the fact that he or she does not fulfil the entry conditions. The MS's obligation to guarantee that the person will remain at their disposal to prevent risk of absconding and potential resulting security risk is moved to Article 6. Since the main goal of the proposal is to prevent secondary movements we deem it is not necessary to highlight the place where the person will be kept. The focus should fall on the measures for preventing secondary movements not on the locations. We believe that as additional burden for the frontline MSs is foreseen a balanced approach is needed.

Article 5

Screening within the territory

1. Member States shall apply the screening to third-country nationals **illegally staying present found** within their territory where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner **and that they have already been subjected to screening in a Member State**. Member States shall lay down in their national law provisions to ensure that those third country nationals remain at the disposal of the competent authorities for the duration of the screening, to prevent any risk of absconding **and potential resulting security risks**.
2. ~~Member States may refrain from applying the screening in accordance with paragraph 1 if a third country national staying illegally on their territory is taken back immediately after apprehension by another Member State, under bilateral agreements or arrangements existing on the date of entry into force of this Regulation. In this case, the Member State which has taken back the third country national concerned shall apply the screening.~~

Commented [S19]: We prefer to stick to simple rules: the screening will be performed by the authorities that apprehend the person.

Article 6

Requirements concerning the screening

1. In the cases referred to in Article 3 **and 5**, the screening shall be conducted at **any appropriate location designated by the Member State**, ~~locations situated at or in proximity to the external borders. [Where a Member State cannot accommodate third country nationals in those locations, it can resort to the use of other locations within its territory.]~~
2. ~~In the cases referred to in Article 5, the screening shall be conducted at any appropriate location within the territory of a Member State. **Member States shall lay down in their national law provisions to ensure that those third country nationals remain at the disposal of the competent authorities for the duration of the screening, to prevent any risk of absconding and potential resulting security risks.**~~
3. In the cases referred to in Article 3, the screening shall be carried out without delay and shall in any case be completed within 5 days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point. In exceptional circumstances, where a disproportionate number of third-country nationals needs to be subject to the screening at the same time, making it impossible in practice to conclude the screening within that time-limit, the period of 5 days may be extended by a maximum of an additional 5 days.

Commented [S20]: The focus should fall on the measures for preventing secondary movements not on the locations. We believe that as additional burden for the frontline MSs is foreseen a balanced approach is needed.

Commented [S21]: This is the text moved from Article 4.

With regard to persons referred to in Article 3(1)(a) to whom ~~first~~ Article 14 (1) and (3) of Regulation (EU) 603/2013 apply, where they **subsequently** remain physically at the external border for more than 72 hours, the screening shall apply and the period for the screening shall be reduced to two days.

4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.
5. The screening referred to in Article 5 shall be carried out without delay and in any case shall be completed within ~~3-5~~ days from apprehension.
6. The screening shall comprise the following ~~mandatory~~ elements:
- (a) ~~preliminary health and~~ vulnerability check as referred to in Article 9 ;
 - (b) *preliminary health check as referred to in Article 9, unless the screening authorities qualified medical staff consider that it ~~the health check~~ is not necessary;*
 - (cb) identification as referred to in Article 10;
 - (de) registration of biometric data in the appropriate databases Eurodac as referred to in [Article 14(6-5)], to the extent it has not occurred yet;
 - (ed) security check as referred to in Article 11;
 - (fe) the filling out of a ~~de-briefing~~ *pre-entry screening* form as referred to in Article 13;
 - (gf) referral to the appropriate procedure as referred to in Article 14.
7. Member States shall designate ~~competent~~ **the screening** authorities to carry out the screening. ~~They shall and ensure that they~~ deploy appropriate staff and sufficient resources to carry out the screening in an efficient way.

Member States shall ~~ensure that the screening authorities authority includes~~ designate qualified medical staff to carry out the ~~tasks vulnerability assessment and the~~ health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs **or equivalent mechanisms** shall also be involved, where appropriate.

Member States shall also ensure that only the screening authorities responsible for the identification or verification of identity and the security check have access to the databases foreseen in Article 10 and Article 11 of this Regulation.

The ~~competent~~ **screening** authorities may be assisted or supported in the performance of the screening by experts or liaison officers and teams deployed by the European Border and Coast Guard Agency and the [European Union Agency for Asylum] within the limits of their mandates **and upon request by the Member State.**

Article 6a - NEW

Obligations of third country nationals submitted to screening

1. The third country nationals subject to screening shall remain, for its duration, at the disposal of the screening authorities, in the locations ~~designated referred to in Article 6 (1) and (2) for that purpose.~~
2. They shall cooperate with the screening authorities in all elements of the screening as set in Article 6 (6), in particular, by providing:
 - a) Name, date of birth, gender and nationality as well as documents and information that can prove this data;
 - b) fingerprints and facial image as referred to in Regulation (EU) XXX/XXX (EURODAC Regulation).

Article 7

Monitoring of fundamental rights

1. Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening.
2. Each Member State shall ~~establish~~ provide for an independent monitoring mechanism
 - to ensure compliance with EU and international law ~~and, including the Charter of Fundamental Rights, including in relation with the access to the asylum procedure and the principle of non-refoulement;~~ during the screening;
 - ~~where applicable, to ensure compliance with national rules on detention of the person concerned, in particular concerning the grounds and the duration of the detention; restrictive measures taken to ensure that the third country national remains at the disposal of the designated authorities.~~
 - ~~to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay.~~

~~Member States shall put in place adequate safeguards to guarantee the independence of the mechanism.~~

Commented [S22]: We propose to keep the monitoring mechanism only for screening and to leave aside the references to asylum since these issues are guaranteed by the relevant asylum acts

The Fundamental Rights Agency shall issue general guidance for Member States on the setting up of such mechanism and its independent functioning. ~~Furthermore, Member States may request the Fundamental Rights Agency to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.~~

~~Member States may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring.~~

Article 8

Provision of information

1. Third-country nationals subject to the screening shall be succinctly informed about ~~the purpose and the modalities of the screening:~~
 - (a) the **purpose, steps-modalities and elements** of the screening as well as possible outcomes of the screening;
 - (b) the rights and obligations of third country nationals during the screening, including the obligation on them to remain in the designated facilities during the screening.
2. During the screening, they shall also, where appropriate, receive **succinct** information on:
 - (a) the applicable rules on the conditions of entry for third-country nationals in accordance with Regulation (No) 2016/399 [Schengen Border Code], as well as on other conditions of entry, stay and residence of the Member State concerned, to the extent this information has not been given already;
 - (b) **the applicable rules on applying** ~~where they have applied, or there are indications that they wish to apply,~~ for international protection, information on the obligation to **apply make an application** for international protection in the Member State of first entry or legal stay set out in Article [9(1) and (2)] of Regulation (EU) No XXX/XXX [ex-Dublin Regulation], the consequences of non-compliance set out in Article [10(1)] of that Regulation, and the information set out in Article 11 of that Regulation as well as on the procedures that follow the making of an application for international protection;
 - (c) the obligation for illegally staying third-country nationals to return in accordance with Directive XXXXX [Return Directive];
 - (d) the possibilities to enrol in a programme providing logistical, financial and other material or in-kind assistance for the purpose of supporting voluntary departure;
 - (e) the conditions of participation in relocation in accordance with Article XX of Regulation (EU) No XXX/XXX [ex-Dublin Regulation] **and, where relevant, relocation in accordance with Article XXX of Regulation (EU) No XXX/XX (Regulation on situations of crisis)**;
 - (f) the information referred to in Article 13 of the Regulation (EU) 2016/679¹⁵ [GDPR].
3. The information provided during the screening shall be given in a language which the third-country national understands or is reasonably supposed to understand **or, in any case, in at**

¹⁵ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016

least five of those languages which are most frequently used or understood by illegal migrants entering the Member State concerned. The information shall be given in writing ~~and, or~~ where necessary for the applicant's proper understanding, shall also be supplied ~~may be supplemented orally, using interpretation services where possible in exceptional circumstances.~~ Where needed, it shall be provided in an appropriate manner in the case of vulnerable persons. ~~taking into account the age and the gender of the person.~~

4. Member States may authorise relevant and competent national, international and non-governmental organisations and bodies to provide third country nationals with information under this article during the screening according to the provisions established by national law. **Such information may also be provided by leaflets developed by with the assistance of the EU agencies, or based on the information developed by them, as appropriate.**

Article 9

Health checks and vulnerabilities

1. Third-country nationals submitted to the screening referred to in Article 3 **shall have access to necessary emergency health care and essential treatment of illness.** They shall be subject to a preliminary **health check** ~~medical examination~~ with a view to identifying any needs for immediate **health** care or isolation on public health grounds, unless, based on the circumstances concerning the general state of the ~~each~~ individual third-country nationals concerned and the grounds for directing ~~them~~ **her/him** to the screening, the **qualified medical staff screening** ~~relevant competent authorities are satisfied~~ **consider** that no preliminary medical **health and vulnerability** check screening is necessary. In that case, they shall inform those persons accordingly.
2. ~~Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, and collect information on possible have special reception or procedural needs~~ victims of torture or have special reception or procedural needs within the meaning of Article 20 of the [recast] Reception Conditions Directive. **Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a vulnerability check with a view to identifying any indication of vulnerability. The vulnerability check shall be conducted by a screening authority trained for that purpose which may be assisted by non governmental organizations and where relevant by medical staff as referred to in Article 6(7).**

3. Where there are indications of vulnerabilities ~~or special reception or procedural needs~~, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities. **Where a need for immediate health care was identified, such care shall be swiftly provided. Where a need for isolation on public health grounds was identified, the necessary public health measures shall be taken.**
4. ~~Where it is deemed necessary based on the circumstances, third-country nationals submitted to the screening referred to in Article 5 shall be subject to a preliminary medical examination, notably to identify any medical condition requiring immediate care, special assistance or isolation.~~

Article 10

Identification ~~and~~ or verification of identity

1. To the extent it has not yet occurred during the application of Article 8 of Regulation (EU) 2016/399, the identity of third-country nationals submitted to the screening pursuant to Article 3 or Article 5 shall be verified or established, by using, **where applicable, in particular** the following ~~data, in combination with national and European databases~~:
 - (a) identity, travel or other documents;
 - (b) data or information provided by or obtained from the third-country national concerned; and
 - (c) biometric data;
2. For the purpose of the identification ~~and or verification~~ referred to in paragraph 1, the ~~competent screening~~ authorities shall query, **using the data or information referred in paragraph 1**, any relevant national databases as well as the common identity repository (CIR) referred to in Article 17 of Regulation (EU) 2019/817, **the Schengen Information System (SIS) and where relevant, national databases applicable in accordance with national legislation. The biometric data of a third-country national taken live during the screening, as well as the identity data and, where available, travel document data shall be used to that end.**
3. **Biometric data of a third-country national taken live shall be used for searches in the CIR.** Where the biometric data of the third-country national cannot be used or where the query with those data referred to in paragraph 2 fails **or returns no result**, the query as referred to in paragraph 2 shall be carried out with the identity data of the third-country national, in combination with any ~~identity, travel or other document data~~, or with **any of the identity data or information provided by that third-country national referred to in paragraph 1(b).**

4. Searches in the SIS with biometric data shall be carried out in accordance with Article 33 of Regulation (EU) 2018/1861 and Article 43 of Regulation (EU) 2018/1862. A search with the identity biometric data of the third-country national in combination with any travel or other document data or with any of the data or information referred to in paragraph 1(b) shall in all cases be carried out in SIS.
5. The checks, where possible, shall also include the verification of at least one of the biometric identifiers integrated into any identity, travel or other document.
6. This article is without prejudice to actions undertaken in line with national law with a view to establish the identity of the person concerned.

Article 11

Security check

1. Third country nationals submitted to the screening pursuant to Article 3 or Article 5 shall undergo a security check to verify ~~whether they could that they do not constitute pose a security risk threat to public policy, internal security or international relations for any of the Member States.~~ The security check may cover both the third-country nationals and the objects in their possession. The law of the Member State concerned shall apply to any searches carried out.
2. For the purpose of conducting the security check referred to in paragraph 1, and to the extent ~~that they have not yet done so in accordance with Article 8(3), point (a)(vi), of Regulation (EU) 2016/399, the competent authorities shall query relevant national and Union databases, in particular the Schengen Information System (SIS). it has not been already done during the checks referred to in Article 8 of Regulation (EU) 2016/399, the screening authorities competent authority shall query relevant national and Union databases, in particular the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), including the ETIAS watch list referred to in Article 29-34 of Regulation (EU) 2018/1240, the Visa Information System (VIS), the ECRIS-TCN system, as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned, the Europol data processed for the purpose referred to in Article 18(2), point (a), of Regulation (EU) 2016/794, and the Interpol Databases Stolen and Lost travel documents database (Interpol SLTD) and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) with the data referred to in Article 10(1) and using at least the data referred to under point (c) thereof or any identity discovered during the identification or verification of Article 10.~~

- 4.3. As regards the consultation ~~The query of EES, ETIAS, with the exception of the ETIAS watchlist, and VIS pursuant to paragraph 3, the retrieved data query~~ shall be limited to ~~refusals of entry, indicating decisions to refusals-refuse, annul or revoke of a travel authorisation, or decisions to refuse, annul or revoke a visa or residence permit respectively,~~ which are based on security grounds.

~~The consultation of the ETIAS watchlist pursuant to paragraph 2-3 shall be in accordance with Article 12(5) of this Regulation and Article 35a of Regulation (EU) 2018/1240.~~

In case of a match in the SIS, the screening authority carrying out the search shall have access to all data stored in the SIS related to the matched alert.

~~{The consultation of ECRIS-TCN shall be in accordance with Regulation (EU) .../...}~~

~~{Regulation on the Screening consequential amendments}}~~

~~The query of Interpol databases shall only be performed when it is ensured that no information is revealed to the owner of the Interpol alert.~~

- 5.4. The Commission shall adopt implementing acts setting out the detailed procedure and specifications for retrieving data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

Article 12

Modalities for identification and security checks

1. The queries provided for in Article 10(2) and in Article 11(2) may be launched using, for queries related to EU information systems, **Europol data**, Interpol Databases, and the CIR, the European Search Portal in accordance with Chapter II of Regulation (EU) 2019/817 and with Chapter II of Regulation (EU) 2019/818¹⁶.
2. ~~When the hit is obtained following a query against the SIS, the screening authorities competent authority shall, through consult the SIRENE Network, consult the Bureau of the alert issuing Member State in accordance with Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862.~~

¹⁶ Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration, OJ L 135, 22.5.2019, p. 85.

3. 2. Where a match is obtained following a query as provided for in Article 11(2) and (3) against data in one of the information systems, the **screening authorities** ~~competent authority~~ shall have access to consult, **without prejudice to provisions of the Member States on the protection of classified information**, the file corresponding to that match in the respective information system in order to determine the **security risk to public policy, internal security or international relations pursuant to** as referred to in Article 11(1).
3. When a hit is obtained following a query against the ~~in~~ SIS, the screening authorities shall carry out the procedures set out in Regulations (EU) 2018/1860, ~~Regulation (EU) 2018/1861 or Regulation (EU) 2018/1862~~ including the consultation of the alert issuing Member State through the SIRENE Bureaux.
- 3 4. Where a third-country national corresponds to a person whose data is recorded in the ECRIIS-TCN and flagged in accordance with point (c) of Article 5(1) of Regulation (EU) 2019/816, the data may only be used for the purpose of the security check referred to in Article 11 of this Regulation and for the purpose of consultation of the national criminal records which shall be in accordance with Article 7a of the Regulation 2019/816. National criminal records shall be consulted prior to the delivery of an opinion pursuant to Article 7a of that Regulation.
5. Where a query as provided for in Article 11(2 3) reports a match against Europol data, **an automated notification shall be sent to the screening authority** ~~competent authority of the Member State shall inform~~ Europol in accordance with Regulation (EU) 2016/794 in order to take, if needed, any appropriate follow-up action in accordance with **that Regulation** ~~the relevant legislation~~.
6. 4. ~~Where a query~~ **Queries** as provided for in Article 11(2 3) databases **shall be performed in accordance with Articles 9(5) and 72(1) of Regulation (EU) 2019/817. Where it is not possible to perform such queries in a way that no information is revealed to the owner of the Interpol alert, the screening shall not include the query of the Interpol databases reports a match against the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) or the Interpol Stolen and Lost Documents database, the competent authority of the Member State shall inform the Interpol National Central Bureau of the Member State that launched the query in order to take, if needed, any appropriate follow-up action in accordance with the relevant legislation.**
7. 5. ~~When a hit is obtained in the ETIAS watchlist, the provisions of Article 35a of Regulation (EU) 2018/1240 shall apply. In accordance with Article 35a of Regulation (EU) 2018/1240, in the event of a hit in the ETIAS watchlist, the ETIAS National Unit or Europol having entered the data in the ETIAS watchlist shall be automatically notified and shall provide a reasoned opinion to the screening authority competent authority performing the Screening within two days of the receipt of the notification, in case of screening pursuant to Article 5, or within three days of the receipt of the notification in other cases. The absence of a reply within that deadline shall mean that there are no security risks to be taken into consideration.~~

~~8.6.~~ The Commission shall adopt implementing acts to specify the procedure for cooperation between the authorities responsible for carrying out the screening, Interpol National Central Bureaux, and Europol national unit, and ECRIS-TCN central authorities, respectively, to determine the security risk to ~~public policy, internal security or international relations~~. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

Article 13

De-briefing Screening form

1. ~~On completion of~~ During the screening and at the latest on its completion, the competent screening authorities shall, with regard to the persons referred to in Article 3 and in Article 5, complete the a form in Annex I containing, at least, the following data:
- (a) name, date and place of birth and sex;
 - (b) ~~initial and subsequent~~ indication of nationality or statelessnessnationalities and countries of residence prior to arrival and languages spoken;
 - (c) reason to perform the screening;
 - (d) information, where applicable, on vulnerability ~~and special reception or procedural needs~~ identified during the screening, and on health checks performed, excluding detailed medical information.
 - (e) whether the third country national has made an application for international protection;
 - (f) whether there is a hit in accordance with Article 11;
 - ~~(g) information if any of the family members [or relatives] are located on the territory of the Member States;~~
 - (h) whether the third country national has complied with its obligation to cooperate in accordance with Article 6a.

The screening authotities shall also specify whether the data referred to in points (a), (b) and ~~(g)~~ (g) are confirmed or declared by the person concerned.

2. Where available, the following data ~~should~~ shall be included:
 - (ea) reason for unauthorised arrival, entry, and, where appropriate, illegal stay or residence, including information on whether the person made an application for international protection;
 - (eb) information obtained on routes travelled, including the point of departure, the places of previous residence, the third countries of transit and those where **application for international protection** may have been ~~made sought~~ or granted as well as the intended destination within the Union and **presence and validity of travel and identity documents**;
 - (ec) ~~information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling.~~
 - (ed) Any other relevant information.
4. The screening authorities shall transmit to the competent authorities any information obtained during the screening on assistance provided to the third country national by a person or an organisation in relation to the unauthorised crossing of the border, and any related information in cases of suspected smuggling or trafficking in human beings.

Article 14

~~Outcome~~ Completion of screening

Once the screening is completed or, at the latest, when the time limits set in Article 6 expire, the following rules apply:

1. The third country nationals referred to in Article 3(1) point (a) and (b) of this Regulation who have not **made an application** applied for international protection and with regard to whom the screening has not revealed that they fulfil entry conditions set out in Article 6 of Regulation (EU) 2016/399, shall be referred to the competent authorities to apply *procedures respecting Directive (EU) 2008/115/EC (Return Directive), including or, where applicable and except for search and rescue operations, refusal of entry or other simplified return procedures in accordance with Article 14 of Regulation (EU) 2016/399 and Article 2(2)(a) of that Directive (EU) 2008/115/EC (Return Directive).*

~~In cases not related to search and rescue operations, entry may be refused in accordance with Article 14 of Regulation 2016/399.~~

The form referred to in Article 13 shall be transmitted to the relevant authorities to whom the third country national is being referred.

Commented [S23]: After the completion of screening the TCN shall be referred to the appropriate procedure under the Return Directive or APR. Since the refusal of entry and the simplified return procedures fall under the scope of Article 2 (2)(a) of Return Directive in connection with Article 14 of SBC it is redundant to explicitly specify this. We deem that that explanation is more appropriate for the recital.
Thus the aim of the proposal is achieved. The person will be referred to the appropriate procedure avoiding the discussion linked to the legal fiction.

2. Third-country nationals referred to in Article 3(1) who have made an application for international protection, shall be referred to the authorities mentioned in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation], together with the form referred to in Article 13 of this Regulation,

As regards third-country nationals referred to in Article 3(2), Article 3(3) and Article 5, the form referred to in Article 13 of this Regulation, as soon as possible and at the latest once completed, shall be referred to the authorities mentioned in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation].

~~On that occasion, the authorities conducting the screening shall point in the de-briefing form to any elements which seem at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure.~~

3. Where the third country national is to be relocated under the mechanism for solidarity established by Article XX of Regulation (EU) No XXXX/XXXX [Dublin Regulation], the third-country national concerned shall be referred to the relevant authorities of the Member States concerned together with the form referred to in Article 13.
4. The third-country nationals referred to in Article 5, who have not ~~applied~~ made an application for international protection ~~and with regard to whom the screening has not revealed that they fulfil the conditions for entry and stay~~ shall continue to be subject to return procedures respecting Directive 2008/115/EC.
5. ~~Where third-country nationals submitted to the screening in accordance with Article 5 make an application for international protection as referred to in Article 25 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation), paragraph 2 of this Article shall apply accordingly.~~
65. In respect of third-country nationals to whom Regulation EU No XXX/XXX [Eurodac Regulation] applies, the screening ~~competent~~ authorities shall take the biometric data referred to in Articles [10, 13, 14 and 14a] of that Regulation (EU) and shall transmit it in accordance with that Regulation.
76. Where the third country nationals referred to in Article(s) 3(1) ~~and Article 5~~ are referred to an appropriate procedure ~~regarding asylum international protection, refusal of entry or return~~ or where the form referred to in Article 13 was passed to these authorities concerning the third-country nationals referred to in Article 3(2), Article 3(3) and Article 5, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure. Where necessary, the checks set forth under this Regulation ~~may~~ shall continue within the subsequent procedure *by the respective competent authorities.*

Commented [S24]: See comment 11.

7. *Where, in accordance with national criminal law, a third-country national referred to in Articles 3 or 5 is apprehended under criminal law procedures, the screening may not be applied. If the screening had already started, the form referred to in Article 13 shall be sent, with indication of circumstances that ended the screening, to the authorities competent for the procedures respecting Directive (EC) 2008/115/EC (Return Directive), or, if the third-country national has made an international protection application, the authorities mentioned in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation].*

Article 15

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. **Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act, and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**

Article 16

Amendments to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is amended as follows:

- (1) in Article 6, paragraph 2 is replaced by the following:
 - “(2) Access to the VIS for consulting the data shall be reserved exclusively for the duly authorized staff of:
 - (a) the national authorities of each Member State and of the EU bodies which are competent for the purposes laid down in Articles 15 to 22, Articles 22g to 22m, and Article 45e;
 - (b) the ETIAS Central Unit and the ETIAS National Units, designated pursuant to Articles 7 and 8 of Regulation (EU) 2018/1240, for the purposes laid down in Articles 18c and 18d of this Regulation and in Regulation (EU) 2018/1240;

- (c) the ~~competent~~ **screening** authorities, designated pursuant to Article 6(7) of Regulation (EU) 2020/XXX [screening regulation], for the purposes laid down in Articles 10 to 12 of that Regulation;
- (d) the national authorities of each Member State and of the Union bodies which are competent for the purposes laid down in Articles 20 and 21 of Regulation (EU) 2019/817.

That access shall be limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued.”

Article 17

Amendments to Regulation (EU) 2017/2226

Regulation (EU) 2017/2226 is amended as follows:

- (1) in Article 6(1), the following point (k) is inserted after point (j):
 - “(k) support the objectives of the screening established by Regulation (EU) 2020/XXX of the European Parliament and of the Council¹⁷, in particular for the checks provided under **Articles 10 to 12** thereof.”
- (2) Article 9 is amended as follows:
 - (a) the following paragraph 2a is inserted after paragraph 2:
 - “2a. The ~~competent~~ **screening** authorities referred to in Article 6(7) of Regulation (EU) 2020/XXX shall have access to the EES to consult data.”;
 - (b) paragraph 4 is replaced by the following:
 - “(4) Access to the EES data stored in the CIR shall be reserved exclusively for the duly authorized staff of the national authorities of each Member State and for the duly authorized staff of the Union agencies that are competent for the purposes laid down in Article 20, Article 20a and Article 21 of Regulations (EU) 2019/817 and 2019/818. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued.”

¹⁷ See footnote of the proposal

(3) the following Article 24a is inserted after Article 24:

“Article 24a

Access to data for the identification and for the security check for the purposes of screening

1. For the purposes of verifying or establishing the identity of a person pursuant to Article 10 of Regulation (EU) XXX/YYYY (Screening) and the carrying out of security checks pursuant to Articles 11 and 12 of that Regulation, ~~competent~~ **the screening authorities** referred to in Article 6(7) of that same Regulation shall have access to EES data to the extent necessary to be able to carry out searches using the data referred to in Article 10(1) of Regulation (EU) XXX/YYYY (Screening) against the data stored in the EES in accordance with points (a) to (d) of Article 16(1) and points (a) to (c) of Article 17(1) of this Regulation.

2. If the search carried out pursuant to paragraph 1 indicates that data on the person are stored in the EES, the **screening authorities** ~~competent authority~~ referred in paragraph 1 shall be given access to the data of the individual file, the entry/exit records and refusal of entry records linked to it.

If the individual file referred to in the first subparagraph does not include any biometric data, the **screening authorities** ~~competent authorities~~ may proceed to access the biometric data of that person and verify correspondence in VIS in accordance with Article 6 of Regulation (EC) No 767/2008.”

(4) in Article 46(1), point (a) is replaced by the following:

“(a) The purpose of the access referred to in Article 9 and Article 9(2a).”

Article 18

Amendments to Regulation (EU) 2018/1240

Regulation (EU) 2018/1240 is amended as follows:

(1) in Article 4, point (a) is replaced by the following:

“(a) contribute to a high level of security by providing for a thorough security risk assessment of applicants, prior to their arrival at external border crossing points, and of persons subject to the screening referred to in Regulation (EU) 2020/XXX [Screening Regulation], in order to determine whether there are factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a security risk;”

(2) In paragraph 2 of Article 8 a new point (h) is added:

(h) providing opinions in accordance with Article 35a.

(3) Article 13 is amended as follows:

(a) the following paragraph 4b is inserted after paragraph 4a:

“4b. For the purposes of Articles 10 to 12 of Regulation (EU) XXX/YYYY (Screening), **the screening authorities** ~~competent authorities~~ referred to in **the first third sub-paragraph of Article 6(7) of that Regulation**, shall have:

(a) access to the data in the ETIAS Central System to the extent necessary to be able to carry out searches using the data referred to in Article 10(1)(a) and (b) of that Regulation against the data contained in the ETIAS Information System;

~~If the search carried out pursuant to paragraph 1 reveals a match, the screening authorities competent authorities shall have~~

(b) a ‘read-only’ access, to the ETIAS applications files stored in the ETIAS Central system **where the search carried out pursuant to point (a) reveals a match, in accordance with Article 11(3) of that Regulation.**

~~By way of derogation to point (b) of the first sub-paragraph, where If the search carried out pursuant to paragraph 1 indicates that there is a correspondence between the data used for the search and the data recorded in the ETIAS watchlist referred to in Article 34, the screening authorities referred to in the first sub-paragraph of Article 6(7) of Regulation (EU) XXX/YYYY shall be notified of such correspondence by the ETIAS Central System and shall not have access to the data in the ETIAS watchlist.~~

If the search carried out pursuant to paragraph 1 indicates that there is a correspondence between the data used for the search and the data recorded in the ETIAS watchlist referred to in Article 34, the ETIAS National Unit or Europol having entered the data in the ETIAS watchlist shall be notified of the correspondence and shall be responsible for accessing the data in the ETIAS watchlist and for providing an opinion in accordance with Article 35a of this Regulation.”

(b) paragraph 5 is replaced by the following:

“5. Each Member State shall designate the competent national authorities referred to in paragraphs 1, 2, 4 and 4a of this Article, and the ~~competent~~ **screening** authority referred to in Article 6(7) of Regulation (EU) 2020/XXX, and shall communicate a list of those authorities to eu-LISA without delay, in accordance with Article 87(2) of this Regulation. That list shall specify for which purpose the duly authorised staff of each authority shall have access to the data in the ETIAS Information System in accordance with paragraphs 1, 2, 4 and 4a of this Article.”

(4) the following Article 35a is inserted after Article 35:

“Article 35a

Tasks of the ~~Member States~~ **ETIAS National Unit** and Europol regarding the ETIAS watchlist for the purpose of the screening procedure

1. In cases referred to in the ~~third~~ **second** sub-paragraph of Article 13(4b), the ETIAS Central System shall send an automated notification to the ~~Member States~~ **ETIAS National Unit** or Europol having entered ~~the those~~ data ~~in~~ **into** the ETIAS watchlist.
2. ~~Within 4 3 three days of the receipt of the notification or two days in the cases of Article 5, the ETIAS National Unit(s) or Europol shall provide a reasoned opinion to the Member State performing the Screening, as to whether the third country national undergoing the Screening could pose poses a security risk threat.~~

~~Where the ETIAS National unit or Europol that entered the data into the watchlist consider that the third country national undergoing the screening could pose poses a security risk threat, they may shall immediately notify the respective screening authorities and provide a reasoned opinion to the Member State performing the screening, within three two days of the receipt of the notification or two days in the cases of screening pursuant to Article 5 of Regulation (EU) xxxx/yyyy, in the following manner:~~

~~(a) the Member States or the ETIAS national units shall can~~ inform the screening authorities through a secure communication mechanism, to be set up by eu-LISA, between the ETIAS National Units on the one part and the screening authorities on the other;

~~(b) Europol can~~ inform the screening authorities using the communication channels provided for in Regulation (EU) 2016/794.

~~If no opinion is provided, it should be considered that there is no security risk threat.~~

~~The reasoned opinion shall be provided through a secure notification mechanism to be set up by eu-LISA between the ETIAS National Units and Europol on the one part, and the competent authorities (of the Screening) on the other.~~

~~In case the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist consider the third country national undergoing the Screening could pose poses a security risk threat, it can inform the screening authorities competent authorities in any appropriate manner.~~

3. The automated notification(s) referred to in paragraph 1 shall contain the data referred to in Article ~~10(1)~~ **11(2)** of Regulation (EU) xxxx/yyyy (Screening) used for the query.”

- (5) in Article 69(1), the following point (ea) is inserted after point (e):
- “(ea) where relevant, a reference to queries entered in the ETIAS Central System for the purposes of Articles 10 and 11 Regulation (EU) XXX/YYYY (Screening), the hits triggered and the results of this query.”

Article 19

Amendments to Regulation (EU) 2019/817

Regulation (EU) 2019/817 is amended as follows:

- (1) **In Article 7, paragraph 2 is replaced by the following:**

‘The Member State authorities and Union agencies referred to in paragraph 1 shall use the ESP to search data related to persons or their travel documents in the central systems of the EES, VIS and ETIAS in accordance with their access rights as referred to in the legal instruments governing those EU information systems and in national law. They shall also use the ESP to query the CIR in accordance with their access rights under this Regulation for the purposes referred to in Articles 20, 20a, 21 and 22.’

- (2) Article 17 is amended as follows:

- (a) *paragraph 1 is replaced by the following:*

“A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a of this Regulation, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22.”

- (b) *paragraph 4 is replaced by the following:*

“Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for verifying or establishing the identity of a person pursuant to Article 20a of this Regulation, for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner.”

(3) In Article 18, paragraph 3 is replaced by the following:

“The authorities accessing the CIR shall do so in accordance with their access rights under the legal instruments governing the EU information systems, and under national law and in accordance with their access rights under this Regulation for the purposes referred to in Articles 20, 20a, 21 and 22.”

(4) the following Article 20a is inserted after article 20:

“Article 20a

Access to the common identity repository for identification according to Regulation (EU) 2020/XXX

1. Queries of the CIR shall be carried out by the designated ~~competent~~ **screening** authority as referred to in Article 6(7) of Regulation (EU) yyyy/XXX (Screening), solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.
2. Where the query indicates that data on that person are stored in the CIR, the ~~competent~~ **screening** authority shall have access to consult the data referred to in Article 18(1) of this Regulation as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/818 of the European Parliament and the Council.”

(5) in Article 24, ~~the following paragraph 2a is inserted after paragraph 2:~~

(a) **Paragraph 1 is replaced by the following:**

- ‘1. Without prejudice to Article 46 of Regulation (EU) 2017/2226, Article 34 of Regulation (EC) No 767/2008 and Article 69 of Regulation (EU) 2018/1240, ~~Article 29 of Regulation (EU) 2019/816~~, eu-LISA shall keep logs of all data processing operations in the CIR in accordance with paragraphs 2, 2a, 3 and 4 of this Article.’**

(b) **the following paragraph 2a is inserted after paragraph 2:**

- “2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:
- (a) the Member State launching the query;
 - (b) the purpose of access of the user querying via the CIR;
 - (c) the date and time of the query;
 - (d) the type of data used to launch the query;
 - (e) the results of the query.”

(c) *in paragraph 5, the first sub-paragraph is replaced by the following:*

“(5) Each Member State shall keep logs of queries that its authorities and the staff of those authorities duly authorised to use the CIR make pursuant to Articles 20, 20a, 21 and 22. Each Union agency shall keep logs of queries that its duly authorised staff make pursuant to Articles 21 and 22.”

Article 20

Evaluation

[Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.]

No sooner than [five] years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report, ~~at the latest six months before the [five] years' time limit expires.~~

Article 21

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall start to apply 6 18 (...) months from its entry into force.

The provisions laid down in Articles 10 to 12 related to queries to EU information systems, the CIR and the European Search Portal shall start to apply only once the relevant information systems, CIR and ESP enter into operation.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

DENMARK

Article 6 and 9 regarding health checks

Denmark cannot support the backtracking done by the Presidency regarding the health check. When a person does not have any complaints or requests regarding their health, and when the person does not seem to be in need of medical assistance, then there is no need to conduct a thorough assessment of whether a check should be conducted or not.

DK agrees that border guards should not conduct such an assessment. However, the assessment is simply not always necessary, especially given that there are already procedures in place, where the health of the applicants is guaranteed (e.g. in the reception conditions directive). Furthermore, an assessment in every case would demand significant financial and practical burdens.

Thus, Denmark asks for a more flexible definition regarding when the health check should be conducted, as the initial health and vulnerability check should focus on threats to public health, while more thorough health examinations should be conducted at later procedures.

Article 6.5

Denmark supports the proposed amendment regarding the time limit in Article 5 cases.

Article 6a

Denmark proposes a new litra c, whereby travel documentation where available must be provided during the screening.

Article 10.1.c

Please specify if both face and fingerprints are mandatory, or if MS can decide on their own which to use.

Article 10.4

Please specify if the biometric data for the SIS search should be the same biometric data used for the CIR search (taken live).

Article 10.5

Please specify if this verification should be done using same biometric data used for the CIR search (taken live).

Article 11.2

Should Eurodac also be queried during the security check? If not, why?

Article 11.3

Please clarify if MS are obliged to verify the match result before continuing the process.
Please specify under which conditions the MS can store the data related to the match (incl. retention period).

Article 14.1

Please specify how the form should be transmitted to the relevant authorities to whom the third country national is being referred.

Article 14.4

Depending on how the screening in Article 5 applies an outcome of the screening could also be a Dublin procedure. If the screening applies to a third-country national who entered the territory of the Member States and applied for asylum in Member State A before this Regulation entered into force (therefore the third-country national has not been subject to a screening) and is found illegally staying on the territory of Member State B after this Regulation entered into force, the outcome of the screening procedure should also include Dublin procedure.

FINLAND

We are pleased with many of the changes made to art 9 on the health and vulnerability check and in particular the vulnerability check. Nevertheless, we would like to again raise some of the issues we and some of the other Member States have reiterated before regarding the modalities of the health check.

The current formulation of the article does not give adequate room for the MS to make decisions on the use of already scarce health care resources. It presumes the need to employ health care professionals even to decide on the derogation regarding the performance of the health check. As one might understand, a health care professional, given the responsibility, would not make a derogation lightly and would therefore most likely need to see the person in question physically as he or she is the one responsible for opting for this derogation. This precondition would, in our view, lead to unwanted and unnecessary use of medical resources.

The fact that all situations and circumstances are not equal in terms of the need for medical support speaks in favor of the possibility for flexibility when deciding on a health check. As explained above, the formulation on the derogation does not free the resources of medical personnel and border guards being tied to logistics etc. This is in reality only achieved by excluding some of the most clear-cut circumstances from the mandatory health check.

In light of the above, we request that the presidency would consider a solution where TCN's that are subject to screening and are encountered at BCP's such as airports, ports and land BCP's would not be automatically included in the preliminary health check. Despite this they would always have access to emergency health care and essential treatment of illness as the article says. Mandatory health check would only apply in situations after SAR, illegal border crossing and when encountering the TCN within the territory as in these situations there is a likelihood for a need of medical assistance. In addition, a MS could if they so wish to opt for a mandatory health check in all the circumstances. This would also be without prejudice to the requirements and preconditions for example detention.

On the vulnerability check the current structure is acceptable as it stands at the moment. Nevertheless, we would like to emphasize the fact that the check in question is essentially a preliminary one, as the text says, and can not be considered a check that settles the issue of possible vulnerability once and for all. The assessment of vulnerabilities should continue throughout the different processes. This is something that could be emphasized in the recital regarding the vulnerability check.

FRANCE

Considérant 18 bis (nouveau)

Les autorités françaises demandent l'ajout de la phrase ci-dessous pour que ce considérant soit cohérent avec le reste du texte et afin d'éviter d'y inclure toutes les personnes en séjour irrégulier qui pouvaient être sur le territoire antérieurement:

If an illegally staying third-country national is apprehended or intercepted at or in the immediate vicinity of an internal border, the apprehending Member States may not apply the screening, if that person is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Regulation **and if there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner and that they have already been subjected to screening in a Member State.**

The Member State which has taken back the third-country national should apply the screening. However, in this case, the transfer of the third-country national has to occur immediately or within a brief period of time after the apprehension or interception, in order to ensure that screening should start without delay, which, in any case, cannot result in the person concerned being subject to restrictive measures, including detention or other alternative measures in both Member States, for a period exceeding the maximum foreseen in this Regulation for the purpose of screening.

Article 3 bis

Pour des raisons de cohérence du règlement, les autorités françaises recommandent d'ajouter au paragraphe 2 de cet article une référence au paragraphe 3 de l'article 3.

Article 4

Les autorités françaises sont très attachées à la fiction de la non-entrée, et il est ainsi indispensable que les personnes soumises au filtrage n'aient aucune possibilité de prendre la fuite au cours de la procédure. La France propose en ce sens la rédaction suivante, conforme à cette conception:

1. During the screening, the persons referred to in Article 3, paragraphs 1 and 2, shall not be authorised to enter the territory of a Member State.

Member States shall lay down in their national law provisions to ensure that **unauthorised entry into the territory and any risk of absconding of the persons referred to in Article 3, paragraphs 1 and 2, are prevented and that these persons remain in the designated location for the duration of the screening.**

Competent authorities shall assess the individual situation of those persons and take into account special needs of vulnerable persons when deciding where they shall remain for the duration of the screening.

Article 9

Les autorités françaises souhaitent que la rédaction de l'article 9 fasse apparaître clairement la distinction désormais opérée dans cet article entre l'examen de l'état de santé et celui de la vulnérabilité (paragraphe 1^{er} et 2), et en tire toutes les conséquences.

En effet, le paragraphe 1^{er} relatif à l'évaluation de l'état de santé mentionne toujours l'examen de la vulnérabilité, soit l'objet du paragraphe 2, et précise que les personnes font l'objet d'une évaluation de leur état de santé et de leur vulnérabilité à moins que le personnel médical qualifié ne l'estime pas nécessaire. Le paragraphe 2, dédié uniquement à l'examen de l'état de vulnérabilité, indique que ce dernier est réalisé par des autorités formées à cet effet et, le cas échéant, assistées de professionnel de santé.

Les autorités françaises proposent ainsi la suppression de la mention de l'examen de vulnérabilité au paragraphe 1^{er} comme suit:

1. Third-country nationals submitted to the screening referred to in Article 3 shall have access to ~~necessary emergency health care and essential treatment of illness~~. They shall be subject to a preliminary health **and vulnerability** check ~~medical examination~~ with a view to identifying any needs for immediate health care or isolation on public health grounds ~~as well as any indications of vulnerability~~, unless, based on the circumstances concerning the general state of the each individual third-country nationals concerned and the grounds for directing ~~them~~ her/him to the screening, the *qualified medical staff* ~~screening relevant competent authorities are satisfied~~ consider that no preliminary ~~medical health and vulnerability~~ check ~~screening~~ is necessary. ~~In that case, they shall inform those persons accordingly.~~

~~2. Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, and collect information on possible have special reception or procedural needs victims of torture or have special reception or procedural needs within the meaning of Article 20 of the [recast] Reception Conditions Directive.~~ Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a vulnerability check with a view to identifying any indication of vulnerability. The vulnerability check shall be conducted by a screening authority trained for that purpose and where relevant assisted in that check by medical staff as referred to in Article 6(7).

Article 13

Comme indiqué en groupe, les autorités françaises proposent de modifier cet article comme suit:

1(g) Information if any of the family members or relatives are located on the territory of the Member States corroborated if available, by biographical data.

2(b) Information obtained on routes travelled, if possible with chronological and geographical references, including the point of departure, the places of previous residence, the third countries of transit and those where application for international protection (...).

Article 18

Les autorités françaises remercient la Présidence pour le compromis proposé au paragraphe 4 puisque l'obligation faite aux unités nationales ETIAS de notifier immédiatement l'autorité en charge du filtrage, en cas de correspondance avec la liste de surveillance, et de transmettre un avis motivé en deux jours, ne s'applique que lorsque le ressortissant constitue une menace pour la sécurité. Ainsi, les unités nationales ETIAS ne seront pas tenues de rendre un avis concernant toutes les correspondances avec la liste de surveillance, mais seulement lorsqu'elles le jugent nécessaire.

Néanmoins, les autorités françaises réitèrent leur forte opposition à la création d'un nouveau canal de communication. Comme évoqué à plusieurs reprises, si les unités nationales ETIAS relèvent le besoin de communiquer avec les autorités compétentes de l'État membre qui effectue le filtrage, il existe déjà des canaux prévus à cet effet qui ne passent pas forcément par un échange entre une unité nationale ETIAS et l'autorité compétente en charge du filtrage. A titre d'exemple, pour les services d'enquêtes, des canaux existants de coopération policière sont disponibles. Un nouveau canal de communication ne ferait que de complexifier les processus métiers des agents des forces de sécurité intérieure. Notre proposition vise un objectif de rationalisation procédurale, pour éviter la multiplication des canaux de communication. Tout nouvel outil ne s'inscrivant pas dans un processus métier clairement défini et pertinent, risque de ne pas être utilisé pleinement.

Les autorités françaises soulignent également les barrières de la langue. Les services en charge de la coopération policière ont pour mission de traiter les demandes transmises par des services de police des États membres et des pays tiers, en traduisant le contenu si nécessaire, avant transmission aux services de police et gendarmerie français pour obtenir des éléments de réponse. Ce traitement en amont des échanges est nécessaire pour assurer le meilleur retour possible. Nous mettons en doute la pertinence d'échanges directs entre les autorités en charge du filtrage et les unités nationales ETIAS pour lesquelles la coopération policière n'est pas la mission première.

Enfin, la délégation française souhaiterait interroger ses homologues par écrit sur la faisabilité opérationnelle de la proposition de la Présidence concernant la création d'un nouveau canal de communication, au regard de leurs procédures nationales respectives.

HUNGARY

Recitals

- (2) The rules governing border control of persons crossing the external borders of the Member States of the Union are laid down in Regulation (EU) 2016/399 of the European Parliament and of the Council (Schengen Borders Code)¹⁸ as adopted under Article 77(2)(b) of the Treaty on the Functioning of the European Union (TFEU). To further develop the Union's policy with a view to carrying out checks on persons and efficiently monitoring the crossing of external borders referred to in the first paragraph of Article 77 TFEU, additional measures should address situations where third-country nationals manage to avoid border checks at the external borders **in accordance with Article 5(1) of Regulation (EU) 2016/399**, or where third-country nationals are disembarked following search and rescue operations as well as where third-country nationals ~~request~~ **make an application for** international protection at a border crossing point without fulfilling entry conditions, **and third country nationals who make an application for international protection and benefit from an authorisation to enter on humanitarian grounds or international obligations under Article 6(5)c of Regulation (EU) 2016/399**. The present regulation complements and specifies Regulation (EU) 2016/399 with regard to those three sets of situations.

According to our point of view, it is not justified to treat persons disembarked in the territory of a Member State following a search and rescue operation separately from those who are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air.

- (11) This Regulation should apply to third-country nationals and stateless persons who are apprehended in connection with the unauthorised crossings of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14(1) and (3) of the Eurodac Regulation for reasons other than their age, as well as to persons who have been disembarked following search and rescue operations, regardless of whether they apply or not for international protection. This Regulation should also apply to those who seek international protection at the border crossing points or in transit zones without fulfilling the entry conditions.

According to our point of view, it is not justified to treat persons disembarked in the territory of a Member State following a search and rescue operation separately from those who are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air.

¹⁸ Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p.1.

- (23) In order to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening, each Member State should ~~establish~~ **provide for** a monitoring mechanism and put in place adequate safeguards for the independence thereof. **For this purpose Member States may resort to already existing national fundamental rights monitoring mechanisms.** The monitoring mechanism should cover in particular the respect for fundamental rights in relation to the screening, as well as the respect for the applicable national rules regarding detention and compliance with the principle of non-refoulement as referred to in Article 3(b) of Regulation (EU) 2016/399. The Fundamental Rights Agency should establish general guidance as to the establishment and the independent functioning of such monitoring mechanism. Member States should furthermore be allowed to request the support of the Fundamental Rights Agency for developing their national monitoring mechanism. Member States should also be allowed to seek advice from the Fundamental Rights Agency with regard to establishing the methodology for this monitoring mechanism and with regard to appropriate training measures. Member States should also be allowed to invite relevant and competent national, international and non-governmental organisations and bodies to participate in the monitoring. The independent monitoring mechanism should be without prejudice to the monitoring of fundamental rights provided by the European Border and Coast Guard Agency's fundamental rights monitors provided for in Regulation (EU) 2019/1896. The Member States should investigate allegations of the breach of the fundamental rights during the screening, including by ensuring that complaints are dealt with expeditiously and in an appropriate way.

We do not agree with the content of the recital, which would require Member States to establish a specific monitoring mechanism related to the screening, nor do we agree that the Fundamental Rights Agency (FRA) should determine the elements with guidance of such a mechanism.

- (36) As the screening concerns persons present at the external border without fulfilling entry conditions, or disembarked after a search and rescue operation, the security checks as part of the screening should be at least of a similar level as the checks performed in respect of third country nationals that apply on beforehand for an authorisation to enter the Union for a short stay, whether they are under a visa obligation or not.

According to our point of view, it is not justified to treat persons disembarked in the territory of a Member State following a search and rescue operation separately from those who are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air.

Article 2

Definitions

For the purposes of this Regulation, the following definitions apply:

1. ‘unauthorised crossing of the external border’ means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. ‘threat to public health’ means a threat ~~to public health~~ within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. ‘verification’ means the process ~~of comparing sets of data to establish the validity of a claimed identity (one to one check), as~~ referred to in Article 4 (5) ~~3 (1) (13) of the EES Regulation (EU) 2019/817 2017/2226;~~
4. ‘identification’ means the process ~~of determining a person’s identity including through a database search against multiple sets of data (one to many check), as~~ referred to in Article ~~3 4 (6) (1) (14) of the EES Regulation (EU) 2019/817 2017/2226;~~
5. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article 2 Point 5, of Regulation (EU) 2016/399;
6. ‘security risk’ means the risk ~~of a threat to public policy, internal security or international relations for any of the Member States, as~~ referred to in Article 3 (1) (6) of the ETIAS Regulation (EU) 2018/1240;
7. ‘terrorist offence’ means ~~an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;~~
8. ‘serious criminal offence’ means ~~an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;~~
9. ‘Europol data’ means ~~personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794,~~ as referred to in Article 4 (16) of the Regulation (EU) 2019/817 Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;
10. ‘biometric data’ means ~~fingerprint data or facial images or both,~~ as referred to in Article 4 (11) of the Interoperability Regulation (EU) 2019/817;

11. ‘Interpol databases’ means ~~databases the Interpol Stolen and Lost Travel Document database (SLTD database) and the Interpol Travel Documents Associated with Notices database (TD4WN database)~~ as referred to in Article 4 (17) of the Interoperability Regulation (EU) 2019/817;
12. ‘vulnerable persons’ means ~~persons minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence~~ as referred to in Article 3 (9) of Directive 2008/115 EC;
13. ‘screening authorities’ means all competent authorities designated by national law to carry out one or more of the tasks under this Regulation ~~except for the health checks laid down in Article 9 (1)~~;
14. ‘Search and Rescue Operations’ means operations of search and rescue as referred in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979.
15. ~~[‘family members’ means those mentioned in Article 2 (g) of Regulation (EU) XXX/XXX (AMMR Regulation).]~~
16. ~~[‘relatives’ means those mentioned in Article 2 (h) of Regulation (EU) XXX/XXX (AMMR Regulation).]~~

We do not consider it justified to include “Search and Rescue Operations” in the definitions. We furthermore have serious concerns regarding the definition of family member proposed by the AMMR regulation.

Article 3

Screening at the external border

1. This Regulation shall apply to all third-country nationals, **regardless of whether they have made an application applied for international protection**, who:
 - (a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14 (1) and (3) of Regulation (EU) 603/2013 for reasons other than their age, or

- (b) are disembarked in the territory of a Member State following a search and rescue operation **and do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.**

~~This Regulation shall apply to all third-country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State except third-country nationals who are turned back or who are kept in custody, confinement or detention during the entirety of a period not exceeding 72 hours between apprehension and removal and for whom the Member State is not required to take the biometric data pursuant to Article 14 (1) and (3) of Regulation (EU) 603/2013 for reasons other than their age.~~

~~The screening shall apply to those persons regardless of whether they have applied for international protection.~~

2. **This Regulation shall apply** ~~The screening shall also apply~~ to all third-country nationals who **have made an application** ~~apply~~ for international protection at external border crossing points or in transit zones and who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.
3. The screening is without prejudice to the application of Article 6 (5) of Regulation (EU) 2016/399, except the situation where the beneficiary of an individual decision issued by the Member State based on Article 6 (5)(c) of that Regulation is seeking international protection.

~~The screening shall also apply to all third-country nationals who benefit from an authorisation to enter based on Article 6(5)(c) of Regulation (EU) 2016/399 and who are seeking international protection.~~

According to our point of view, for the purposes of the draft, it is not justified to treat persons disembarked in the territory of a Member State following a search and rescue operation separately from those who are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air. We therefore request that points (a) and (b) of paragraph 1 of the draft article be merged. For Hungary, this Article means a "red line".

Article 4

Authorisation to enter the territory of a Member State

1. During the screening, the persons referred to in Article 3, paragraphs 1 and 2, shall not be authorised to enter the territory of a Member State.

Member States shall lay down in their national law provisions to ensure that those persons shall remain at the disposal of the competent authorities *at the external border or, if not possible, in other locations as referred to in Article 6 (1), for the duration of the screening to prevent any risk of absconding and potential resulting security risks.*

2. Where it becomes apparent during the screening that the third-country national concerned fulfils the entry conditions set out in Article 6 of Regulation (EU) 2016/399, the screening shall be discontinued and the third-country national concerned shall be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5 (3) of that Regulation.

The screening may also be discontinued when the third country national leaves the territory of the Member States, for the country of origin, residence or another third country ~~they are accepted~~ to which the third-country national concerned voluntarily decides to return and where he or she is accepted.

In our view, the 'fiction of non-entry' should also be extended to third-country nationals illegally staying within the territory of a member state where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner, and we therefore request that Article 5 (Screening within the territory) be included as a reference in paragraph 1. We must stress that the special situation of countries of transit such as Hungary (where illegal migrants usually spend only a couple of hours while trying to get as soon as possible to their countries of destination) must be also taken into account. In this regard, we are still open to a compromise solution that aims to determine a specific time limit according to which the 'fiction of non-entry' could be used to person who are only transiting illegally through a Member State. The application of the principle of fiction of non-entry would also be an important element in order to avoid the abuse of asylum procedures, so in Hungary's view, it is essential to provide all the means at our disposal to be able to successfully combat secondary migration.

Article 6

Requirements concerning the screening

1. In the cases referred to in Article 3, the screening shall be conducted at locations situated at or in proximity to the external borders. **[Where a Member State cannot accommodate third-country nationals in those locations, it can resort to the use of other locations within its territory.]**
2. In the cases referred to in Article 5, the screening shall be conducted at any appropriate location within the territory of a Member State.
3. In the cases referred to in **Article 3**, the screening shall be carried out without delay and shall in any case be completed within 5 days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point. In exceptional circumstances, where a disproportionate number of third-country nationals needs to be subject to the screening at the same time, making it impossible in practice to conclude the screening within that time-limit, the period of 5 days may be extended by a maximum of an additional 5 days.

With regard to persons referred to in Article 3(1)(a) to whom ~~first~~ Article 14 (1) and (3) of Regulation (EU) 603/2013 apply, where they ~~subsequently~~ remain physically at the external border for more than 72 hours, the screening shall apply and the period for the screening shall be reduced to two days.
4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.
5. The screening referred to in Article 5 shall be carried out without delay and in any case shall be completed within ~~3-5~~ days from apprehension.

Commented [Zsákai L.25]: We propose to also indicate Article 5 as reference.

6. The screening shall comprise the following ~~mandatory~~ elements:
- (a) ~~preliminary health and~~ vulnerability check as referred to in Article 9 ;
 - (b) preliminary health check as referred to in Article 9, unless the screening authorities qualified medical staff consider that it the health check is not necessary;**
 - ~~(cb)~~ identification as referred to in Article 10;
 - ~~(de)~~ registration of biometric data in the appropriate databases Eurodac as referred to in [Article 14(6-5)], to the extent it has not occurred yet;
 - ~~(cd)~~ security check as referred to in Article 11;
 - ~~(fe)~~ the filling out of a de-briefing ~~pre-entry screening~~ form as referred to in Article 13;
 - ~~(gf)~~ referral to the appropriate procedure as referred to in Article 14.
7. Member States shall designate ~~competent~~ **the screening** authorities to carry out the screening. ~~They shall~~ **and ensure that they** deploy appropriate staff and sufficient resources to carry out the screening in an efficient way.

Member States shall **ensure that the screening authorities authority includes** designate qualified medical staff to carry out the ~~tasks vulnerability assessment and the~~ health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs **or equivalent mechanisms** shall also be involved, where appropriate.

Member States shall also ensure that only the screening authorities responsible for the identification or verification of identity and the security check have access to the databases foreseen in Article 10 and Article 11 of this Regulation.

The ~~competent screening~~ authorities may be assisted or supported in the performance of the screening by experts or liaison officers and teams deployed by the European Border and Coast Guard Agency and the [European Union Agency for Asylum] within the limits of their mandates.

Regarding the obligation of the conduction of the screening without delay within 5 days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point, we are still convinced that longer timeframe should be established. In many cases, the security risk posed by persons subject to the screening is not known in advance, however, the national authorities involved in the security checks need to be given sufficient time to take a reasoned position on this risk. The introduction of a longer timeframe is also justified because, in some cases, the person subject to screening could be subject to a quarantine obligation as a result of the health check. The measures and conditions to be ensured for persons requiring immediate care are also to be clarified. We furthermore consider as absolutely necessary to carry out the age determination process already during the course of the screening and having said this we would like to suggest the prolongation of the deadlines mentioned in Article 6. We would like to highlight that according to our experiences a lot of irregular migrants try to mislead the national authorities by declaring themselves as unaccompanied minors. In the current case this would mean, that based on Article 41 (5) of the APR the majority of these persons will be exempted from the asylum border procedure and this would create an opportunity for them to leave the territory of the respective Member State more easily.

This is the reason why we think that the age determination must be carried out in the framework of the screening and as the timeframe indicated in article 6 is not sufficient for carrying out a proper age determination process we would like to suggest to prolong this timeframe, or to mention a possible extension of it with regards to the cases when age determination is necessary.

Article 7

Monitoring of fundamental rights

1. Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening.
2. Each Member State shall ~~establish~~ **provide for** an independent monitoring mechanism
 - to ensure compliance with EU and international law, ~~including~~ the Charter of Fundamental Rights **including in relation with the access to the asylum procedure and the principle of nonrefoulement**, during the screening;
 - where applicable, to ensure compliance with national rules on detention of the person concerned, in particular concerning the grounds and the duration of the detention; **restrictive measures taken to ensure that the third country national remains at the disposal of the designated authorities.**
 - to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay.

Member States shall put in place adequate safeguards to guarantee the independence of the mechanism.

The Fundamental Rights Agency shall issue general guidance for Member States on the setting up of such mechanism and its independent functioning. Furthermore, Member States may request the Fundamental Rights Agency to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.

Member States may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring.

This Article draft means a 'red-line' for Hungary and we would still like to ask for the deletion of the whole Article as the member states have an obligation under the Treaties to set up a monitoring and complaint system for violations of fundamental rights in connection with measures regarding deprivation of liberty. We would also like to highlight the fact that the screening is not considered as a separate procedure, no decision would be issued at the end of the screening, and the screening will be followed by a further procedural step, during which the member states must ensure the appropriate legal remedy or complaint regarding the decision made. The only solution we could accept is to say that "Each Member State shall establish provide for an independent monitoring mechanism" and to delete the rest of the paragraph.

Article 9

Health checks and vulnerabilities

1. Third-country nationals submitted to the screening referred to in Article 3 **shall have access to necessary emergency health care and essential treatment of illness.** They shall be subject to a preliminary **health and vulnerability check** medical examination with a view to identifying any needs for immediate **health** care or isolation on public health grounds **as well as any indications of vulnerability**, unless, based on the circumstances concerning the general state of the **each** individual third-country nationals concerned and the grounds for directing them **her/him** to the screening, the **qualified medical staff screening** relevant competent authorities are satisfied **consider** that no preliminary medical **health and vulnerability** check screening is necessary. In that case, they shall inform those persons accordingly.
2. ~~Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, and collect information on possible have special reception or procedural needs~~ victims of torture or have special reception or procedural needs within the meaning of Article 20 of the [recast] Reception Conditions Directive. **Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a vulnerability check with a view to identifying any indication of vulnerability. The vulnerability check shall be conducted by a screening authority trained for that purpose and where relevant assisted in that check by medical staff as referred to in Article 6(7).**

3. Where there are indications of vulnerabilities ~~or special reception or procedural needs~~, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities. **Where a need for immediate health care was identified, such care shall be swiftly provided. Where a need for isolation on public health grounds was identified, the necessary public health measures shall be taken.**
4. ~~Where it is deemed necessary based on the circumstances, third-country nationals submitted to the screening referred to in Article 5 shall be subject to a preliminary medical examination, notably to identify any medical condition requiring immediate care, special assistance or isolation.~~

We continue to take the view that the health checks should be carried out only when necessary.

Article 14

~~Outcome~~ Completion of screening

Once the screening is completed or, at the latest, when the time limits set in Article 6 expire, the following rules apply:

1. The third country nationals referred to in Article 3(1) point (a) and (b) of this Regulation who have not **made an application** applied for international protection ~~and with regard to whom the screening has not revealed that they fulfil entry conditions set out in Article 6 of Regulation (EU) 2016/399~~, shall be referred to the competent authorities to apply ~~procedures respecting Directive (EU) 2008/115/EC (Return Directive) including or, where applicable and except for search and rescue operations, refusal of entry or other simplified return procedures in accordance line with Article 14 of Regulation (EU) 2016/399 and Article 2(2)(a) of that Directive (EU) 2008/115/EC (Return Directive).~~

~~In cases not related to search and rescue operations, entry may be refused in accordance with Article 14 of Regulation 2016/399.~~

The form referred to in Article 13 shall be transmitted to the relevant authorities to whom the third country national is being referred.

2. Third-country nationals referred to in Article 3(1) who have made an application for international protection, shall be referred to the authorities mentioned in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation], together with the form referred to in Article 13 of this Regulation,

Commented [Zsakai L.26]: In our view, the 'fiction of non-entry' should also be extended to third-country nationals illegally staying within the territory of a member state where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner

We believe that a refusal of entry under Article 14 of the Schengen Borders Code would be appropriate, as in paragraph 1, if the period of time that has elapsed since the illegal border crossing can be considered reasonable.

As regards third-country nationals referred to in Article 3(2), Article 3(3) and Article 5, the form referred to in Article 13 of this Regulation, as soon as possible and at the latest once completed, shall be referred to the authorities mentioned in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation].

~~On that occasion, the authorities conducting the screening shall point in the de-briefing form to any elements which seem at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure.~~

3. Where the third country national is to be relocated under the mechanism for solidarity established by Article XX of Regulation (EU) No XXXX/XXXX [Dublin Regulation], the third-country national concerned shall be referred to the relevant authorities of the Member States concerned together with the form referred to in Article 13.
4. The third-country nationals referred to in Article 5, who have not **applied made an application** for international protection ~~and with regard to whom the screening has not revealed that they fulfil the conditions for entry and stay~~ shall **continue to** be subject to return procedures respecting Directive 2008/115/EC.
5. ~~Where third-country nationals submitted to the screening in accordance with Article 5 make an application for international protection as referred to in Article 25 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation), paragraph 2 of this Article shall apply accordingly.~~
65. In respect of third-country nationals to whom Regulation EU No XXX/XXX [Eurodac Regulation] applies, the **screening** ~~competent~~ authorities shall take the biometric data referred to in Articles [10, 13, 14 and 14a] of that Regulation (EU) and shall transmit it in accordance with that Regulation.
76. Where the third country nationals referred to in Article(s) 3(1) ~~and Article 5~~ are referred to an appropriate procedure regarding ~~asylum~~ **international protection, refusal of entry** or return **or where the form referred to in Article 13 was passed to these authorities concerning the third-country nationals referred to in Article 3(2), Article 3(3) and Article 5,** the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure. **Where necessary, the checks set forth under this Regulation may shall continue within the subsequent procedure by the respective competent authorities.**
7. *Where, in accordance with national criminal law, a third-country national referred to in Articles 3 or 5 is apprehended under criminal law procedures, the screening may not be applied. If the screening had already started, the form referred to in Article 13 shall be sent, with indication of circumstances that ended the screening, to the authorities competent for the procedures respecting Directive (EC) 2008/115/EC (Return Directive), or, if the third-country national has made an international protection application, the authorities mentioned in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation].*

LITHUANIA

In general, Lithuania supports the compromise proposal, nevertheless we have concerns and we want to make one proposal. Lithuania (like some other Member States) is of the opinion that it is not necessary to keep qualified medical staff at the external borders on a permanent basis because only qualified medical staff could take the decision on a preliminary health check. The implementation of such provisions may require significant human and material resources, the use of which may be inefficient. Therefore, we believe that such a decision could be taken by the Member State itself, having assessed its own situation and circumstances (for example, in case of a pandemic or other emergencies). We would therefore suggest that Article 6 (b) could be redrafted as follows:

(b) preliminary health check as referred to in Article 9, unless the screening authorities consider that it is not necessary. A Member State may decide that only qualified medical staff shall take the decision on the need for a preliminary health check;

LUXEMBOURG

On Article 7, we keep our strong reservation as we believe it is crucial to strive for strong FR monitoring at our external borders.

Nonetheless, we appreciate your efforts to work it out in the recitals, particularly the qualifier on the independence in rec23.

We also fully support the structure you proposed on vulnerability + health checks, and on the qualification of the personnel who carry them out.

NETHERLANDS

With regard to the recitals:

- (26) A preliminary health ~~examination check~~ should be carried out on all persons submitted to the screening at the external borders with a view to identifying persons in need of immediate care or requiring other measures to be taken, for instance isolation on public health grounds. ~~The specific needs of minors and vulnerable persons should be taken into account.~~ If it is clear from the circumstances that such ~~examination check~~ is not needed, in particular because the overall condition of the person appears to be very good, the ~~examination-check~~ should not take place and the person concerned should be informed of that fact. The preliminary health ~~examination check~~ should be carried out by ~~the health authorities~~ **qualified medical staff** of the Member State concerned. ~~With regard to third country nationals apprehended within the territory, the preliminary medical examination should be carried out where it is deemed necessary at first sight.~~

As will be clear from our previous interventions, we have strong reservation with regard to a 'ground rule' that all must be seen by medical personnel. We appreciate that the presidency has tried to find a compromise wording. In doing so the wording of article 8 is now more restrictive in the sense that medical personnel will assess if a check is needed (thereby already doing the check). While we still have reservations, the system in this recital seems more acceptable than that phrased in article 8.

- (26a) Based on the information available in the screening procedure, and without prejudice to the full assessment incorporated in the reception condition directive, a ~~A~~ vulnerability check should be carried out to identify **any indications** of vulnerability. The specific needs of minors and vulnerable persons should be taken into account.**

While we can accept that a check on the possible elements of vulnerability should be made, we should voice clearly that this cannot be the same as the assessment of the vulnerability as presently included in the reception conditions directive and this distinction should be made clear. Elements inherently connected to the asylum procedure (such as past torture or violation) cannot be taken into account save for relatively obvious situations. Conversely, the assessment in the screening does not limit a further assessment in the asylum procedure and it should be clear from the text that a person may be assessed to be vulnerable in the Asylum procedure.

With regard to the articles:

Article 4

Authorisation to enter the territory of a Member State

1. During the screening, the persons referred to in Article 3, paragraphs 1 and 2, shall not be authorised to enter the territory of a Member State.

Member States shall lay down in their national law provisions to ensure that those persons shall remain at the disposal of the competent authorities *at the external border or, if not possible, in other locations as referred to in Article 6 (1), for the duration of the screening to prevent any risk of absconding and potential resulting security risks.*

2. Where it becomes apparent during the screening that the third-country national concerned fulfils the entry conditions set out in Article 6 of Regulation (EU) 2016/399, the screening shall be discontinued and the third-country national concerned shall be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5 (3) of that Regulation.

The screening may also be discontinued when the third country national leaves the territory of the Member States, for the country of origin, residence or another third country ~~they are accepted~~ to which the third-country national concerned ~~voluntarily decides to~~ can return in accordance with the principle of non-refoulement and where he or she is accepted.

We appreciate the new wording which takes into account our concerns.

We agree that the screening should end if an opportunity to leave the territory presents itself. We are however opposed to the restriction to voluntary return. If a person does not qualify to enter the EU, that person has an obligation to leave, and either forcibly or voluntary this should be complied with. If further assurances are needed, we may add 'while respecting the principle of non-refoulement or even 'were the applicant has not voiced a need for protection'. It is obvious that a person that has requested asylum cannot be returned at this stage, but there may be other agreements in play that member states can rely of and that benefit an efficient border process.

Also, the wording would not align with the return directive as proposed in the recast. To be sure, member states retain the possibility not to apply the return directive in many cases under the screenings regulation and strict alignment of the text is not needed

Article 6

Requirements concerning the screening

1. (...)

2. (...)

6. The screening shall comprise the following ~~mandatory~~ elements:

a. ~~preliminary health and~~ vulnerability check as referred to in Article 9 ;

~~b. preliminary health check where necessary as referred to in Article 9, unless the screening authorities qualified medical staff consider that it the health check is not necessary;~~

We cannot accept this wording, which no longer reflects even the starting proposal of the commission. While it is evident that only qualified medical personnel can act in any medical capacity, there are cases where it is evident that there is no need for medical supervision. This may be solved here by deleting the second part of the paragraph. The reference is not needed here. Alternatively, we support the proposal made by Lithuania, with the same thrust.

Article 6a - NEW

Obligations of third country nationals submitted to screening

1. The third country nationals subject to screening shall remain, for its duration, at the disposal of the screening authorities, in the locations *designated referred to in Article 6 (1) for that purpose.*

2. They shall cooperate with the screening authorities in all elements of the screening as set in Article 6 (6), in particular, by providing:

a) Name, date of birth, gender and nationality as well as documents and information that can prove this data;

b) fingerprints and facial image as referred to in Regulation (EU) XXX/XXX (EURODAC Regulation).

3. Member States shall inform the third-country nationals about their obligations referred to in this article and the consequences of not complying with them, including the penalties under national law where provided for by Member States, consistent with the rule of law principles.

We feel this article could be strengthened if an information an (possible) penalisation clause is included, otherwise the article remains a non-enforceable obligation. The wording is derived from the returns directive proposal (agreed by Member states). While implying some form of penalisation could exist, it does not introduce such a measure in this regulation. We appreciate that member states are hesitant in this department, but we feel we should make this point once more.

(...)

Article 9

Health checks and vulnerabilities

1. Third-country nationals submitted to the screening referred to in Article 3 **shall have access to necessary emergency health care and essential treatment of illness.** They shall be subject to a preliminary **health check** medical examination with a view to identifying any needs for immediate **health** care or isolation on public health grounds; unless, based on the circumstances concerning the general state of ~~the~~ **each** individual third-country nationals concerned and the grounds for directing ~~them~~ **her/him** to the screening, ~~the~~ **qualified medical staff** screening relevant competent authorities are satisfied **consider it is self-evident** that no preliminary medical **health and vulnerability** check screening is necessary. ~~In that case, they shall inform those persons accordingly.~~

The proposed wording implies that all persons in the screening must be seen by medical staff, regardless of their overall situation. This is a deterioration vis a vis the Commission proposal and unacceptable. Read in conjunction with the recital 26, we feel we may solve this by including 'it is self-evident' in the text.

(...)

Article 12

Modalities for **identification and** security checks

~~6.4. Where a query~~ **Queries** as provided for in Article 11(2 ~~3~~) databases **shall be performed in accordance with Articles 9(5) and 72(1) of Regulation (EU) 2019/817.** Where it is not possible to perform such queries in a way that no information is revealed to the owner of the Interpol alert **if the person has indicated to have need of protection against the owner of the Interpol alert,** the screening shall not include the query of the Interpol databases ~~reports a match against the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) or the Interpol Stolen and Lost Documents database,~~ the competent authority of the Member State shall inform the Interpol National Central Bureau of the Member State that launched the query in order to take, if needed, any appropriate follow up action in accordance with the relevant legislation.

While we understand that similar wording was introduced in other instruments, we would like to reflect on this in depth, also in relation to other instruments and the objectives pursued therein.

We see no good reason to hamper the consultation of the Interpol database in this way. An exception could be reasonable where an asylum application is concerned, and then only where the alert is owned by the country of origin from whom the third country national seeks protection. There is no reason why e.g. a Canadian national should thus avoid action being undertaken based on e.g. a Swedish Interpol notice.

This would imply that we prefer to leave possible crime unpunished, and even run a security risk. Also, this will limit the position of the EU in the negotiations with Interpol.

POLAND

Recital (12)

We propose to leave an expression “or in proximity to” in order to be coherent with article 6 (1).

Recital (12)

We propose to use “are secured” instead of “remain” – it will better emphasis that there is an obligation be stay in the designated area.

Recital (18a)

We propose to delete following part of the sentence: “in order to ensure that screening should start without delay”. It repeats what has been already expressed before.

Recital (20)

We propose to leave expression “or in proximity to” in order to be coherent with article 6 (1).

Recital (26)

We are against replacing “qualified medical staff” with “relevant competent authorities”. In most cases no medical attention is needed and infrastructure is not always in place to use standard medical examinations by qualified medical personnel as a basic rule. We do underline that persons arriving are entitled to necessary medical care. However, this does not mean that every individual should be seen by medical personnel.

Article 5 (1)

We propose to delete the phrase “that those third country nationals remain at the disposal of the competent authorities” which does not reflect the character of this regulation. Instead we propose the expression “the presence of the third country nationals in indicated locations”.

Article 6 (3)

PL considers that in case of high migration pressure on the border a fixed period of 5 days + 5 days might be not enough to conduct the screening. As the screening concerns security issues, which are extremely important, the relevant institutions should have enough time to properly screen all the persons. Therefore we propose to replace “in any case” with “as a general rule” and “may be extended by a maximum of an additional 5 days” with “may be extended by an additional period”.

Article 6 (6b)

We are against replacing “qualified medical staff” with “relevant competent authorities”. See argumentation recital (26).

Article 9 (1)

We are against replacing “qualified medical staff” with “relevant competent authorities”. See argumentation recital (26).

Article 10 (3)

We propose to replace word “identity” with word “ alphanumeric”.

Article 11 (3)

We propose also to indicate SIRENE Bureaux: “The screening authorities shall carry out the procedures set out in Regulations (EU) 2018/1860, 2018/1861 or 2018/1862 including the consultation of the alert issuing Member State through the SIRENE Bureaux.”.

ROMANIA

Recital 18 (c)

RO still considers that this recital **will pave the way for a new, unfounded imbalance between MS that fully implement the Schengen acquis and those that do not fully implement the Schengen acquis.**

It still remains **unclear why it is necessary to individualize the MS where controls at internal borders have not been eliminated**, since the intention was to emphasize the applicability of the specific procedures art. 5 with regard to cases detected at internal borders (*the applicability of the definition of article 2 (1) of the Schengen Borders Code rests both with MS fully implementing the Schengen acquis and those not fully implementing it*). **It does not matter whether the border controls have been eliminated or not, the specification should be generally applicable, as is the definition of internal borders provided for by article 2 point 1 of the Schengen Borders Code.**

In this regard we suggest the following:

Without prejudice to the rules on border control applicable at the internal borders of the Member States ~~where a decision to lift such controls has not been taken yet~~, screening of third country nationals apprehended in connection with unauthorised crossing of such internal borders ~~where the controls have not yet been lifted~~ should follow the rules established by this Regulation for screening within the territory and not the rules established for screening at the external borders.

If considered really necessary to point out, RO could accept as a last resort solution adding in the paragraph above ” ***Without prejudice to the rules on border control applicable at the internal borders of the Member States at the internal borders of the Member States, including those of Member States not fully implementing the Schengen acquis, ...***”

Article 5 – Screening within the territory

RO maintain its reservation regarding the screening in the territory, and regarding the provisions of para. 1 “**and that they have already been subjected to screening in a Member State**”, we consider it opportune to establish the way in which the screening in another Member State can be proven (TCN statement/ hit Eurodac / integrated system for this purpose).

In this regard RO suggest the following redrafting: “**and that they have already been subjected to screening in a Member State, according to the third-country nationals statement or as reflected by an Eurodac hit / as presumed by the existence of a hit in Eurodac**”.

Article 8 – Provision of information

At para 2 (b) we would rather inform the third-country nationals about the possibility of applying for asylum and the applicable rules only in cases where they have expressed such an intention or there are elements that show such a need, **as it could be a pull factor and encourage abuse to the asylum procedure**. Therefore, we suggest to maintain the deleted phrase: „where they have applied or there are indications that they wish to apply”.

SLOVENIA

Article 5 define procedures of screening within the territory of Member States.

Para 2 of this article define procedures when a person illegally staying in one Member State is readmitted (based on existing bilateral readmission agreement) to other Member State immediately after apprehension. In this case, the Member State which has taken back such person shall apply the screening.

Additionally, recital 18/a define such cases. It define in Para 2 that restrictive measures for person in case should not exceed the maximum duration foreseen for the purpose of screening. Restrictive measures for screening purposes are defined by this regulation; restrictive measures for readmission are defined by bilateral readmission agreements. We are of the opinion that those two legal basis for are different one and this should be also explained in the recital. Elements of the readmission procedure according to the readmission agreement are also identification of person, basic health check in case of need and some other elements, which are also a part of the screening process.

Because of better understanding, Slovenia propose to amend the text by the following:

The Member State which has taken back the third-country national should apply the screening. The transfer of the third-country national has to occur within the timelines, defined in the readmission agreements or arrangements. The screening in Member State, which has taken back such person, should start without delay and immediately after readmission.

NORGE

Norway avails itself the opportunity to send written comments in this regard. Please note that one of our comments is a joint comment with Iceland.

Firstly, however, Norway would like to take the opportunity to complement and thank the Portuguese Presidency for its constructiveness and flexibility when leading the discussions on the Screening Regulation proposal. It has been demanding, but with a firm hand on the steering wheel, the Presidency secured meaningful and rewarding discussions leading forward, and made it easier for all participants.

Regarding article 9 Norway has concerns regarding the clarity of the provision. For Norway it is important that the Screening Regulation clearly states that the preliminary health check obligation does not require that health personnel are present at all border crossing sites at all time. That the regulation does not require the establishment of health check infrastructure at all border crossing sites. And that it is permissible according to the regulation that, when necessary, the preliminary health check may be conducted at a health facility to where the third country national may be moved from the screening location, for example to a hospital.

The following comment is a joint comment from Iceland and Norway:

We hereby submit our preliminary proposal for a slight change in the preamble no. (48). We are currently assessing the wording in light of the recent changes to the text, in particular in Article 3a. In the last meetings there were several additions to the text. In our view they add to the complexity of the proposal. We are concerned that the additional references in the text would give our practitioners at the borders many challenges in interpreting and applying this framework.

In light of the many proposed additions to the wording of Articles 1-6a, we see the need for the preamble to show the correlation between our association and the scope and subject matter of this regulation. Such an addition in the preamble would be in line with the preamble of the Return Directive 2008/115/EC point (28), a directive that is also closely linked to the proposal for a Screening Regulation. Our proposal is based on the wording of Article 1, but we remain open to modify it in light of possible changes in Article 1.

We therefore propose the following addition to the text (marked in blue):

“(48) As regards (...) Norway, this Regulation constitutes – to the extent that it applies to the screening of third country nationals who have not been subject to border checks at the external borders or made an application for international protection at border crossing points or in transit zones, without fulfilling the entry conditions – a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC32.”

SWITZERLAND

Article 3a

Regarding the new 2nd paragraph of article 3a, we remind that the Asylum Procedure Regulation and the Reception Conditions Directive do not belong to the Dublin acquis and are not binding for Switzerland.

Article 5, Recital 18a

Regarding paragraph 2, we remain sceptical to restrict the use of bilateral agreements to those already existing at the date of entry into force of the screening regulation. For us, it is important that at least updates of existing bilateral agreements remain possible after entry into force of the screening regulation.

Article 9

We have noted that according to the latest compromise proposal qualified medical staff need to decide whether a person submitted to the screening according to art. 3 needs a preliminary health check or not. For us, this formulation is confusing: in order to decide whether someone does not need any health check, medical staff have to look at a person and therefore perform the preliminary health check itself. We therefore support the approach that the screening authorities may decide if a consultation of medical staff for conducting a health check is not needed.