



Council of the  
European Union

Brussels, 12 February 2024  
(OR. en)

---

---

Interinstitutional File:  
2020/0278(COD)

---

---

6047/24  
COR 1

LIMITE

FRONT 23  
IXIM 27  
CODEC 246  
COMIX 40

#### NOTE

From:	Presidency
To:	Permanent Representatives Committee
No. Cion doc.:	11224/20 + ADD 1
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 – Analysis of the final compromise text with a view to agreement

On page 6 of document ST 6047/24 INIT, recitals (11) and (12) should read as follows:

- (11) The screening should be conducted **at any adequate and appropriate location designated by each Member State generally situated** at or in proximity to the external border **or, alternatively, in other locations within the territory**, taking into account geography and existing infrastructures, ensuring that **screening can be carried out without delay**.

Screening of third-country nationals **illegally staying** within Member States' territory who have crossed an external border to enter the territory of the Member States in an **unauthorised manner and who have not been already subjected to screening in a Member State, should be conducted at any adequate and appropriate location designated by each Member State within its territory**.

- (12) ~~The screening should be conducted at or in proximity to the external border, before the persons concerned are authorised to enter the territory. The Member States should apply measures pursuant to national law to prevent the persons concerned from entering the territory during the screening.~~ **Third country nationals subject to screening should remain available to the screening authorities during the screening. The Member States should lay down in their national law provisions to ensure the presence of those third-country nationals during the screening in order to prevent absconding.** ~~In individual cases, where required, this may include detention, subject to the national law regulating that matter.~~ **When it proves necessary and on the basis of an individual assessment of each case, Member States may detain a person subject to the screening if other less coercive alternative measures, cannot be applied effectively. Detention should only be applied as a measure of last resort in accordance with the principles of necessity and proportionality and should be subject to an effective remedy, in line with national, EU and international law. The relevant provisions of Directive (EU) xxxx/xxxx [Reception Conditions Directive], for applicants for international protection, and the relevant rules on detention set out in Directive 2008/115/EC (Return Directive), for third-country nationals who have not made an application for international protection, should apply during the screening.**

On page 13 of document ST 6047/24 INIT, recital 26a should read as follows:

- (26a) **A preliminary vulnerability check should be carried out with a view to identifying persons with indications of being vulnerable, of being victims of torture or other inhuman or degrading treatment, of being stateless, or who may have special reception or procedural needs within the meaning of Article 27 of Directive (EU) xxxx/xxxx [Reception Conditions Directive] and Article 21 of Regulation (EU) xxxx/xxxx [Asylum Procedure Regulation]. This is without prejudice to further assessment in ensuing procedures following the completion of screening. The vulnerability check should be carried out by specialised personnel of the screening authorities trained for that purpose.**

On page 30 of document ST 6047/24 INIT, Article 7, paragraph 2 should read as follows:

2. Each Member State shall ~~establish~~**provide for** an independent **mechanism in accordance with the requirements set out in this article, which shall:** - monitor compliance with EU and international law, including the Charter of Fundamental Rights, in particular as regards access to the asylum procedure, the principle of non-refoulement, the best interest of the child and the relevant rules, including relevant provisions in national law, on detention of the person concerned, during the screening ; and
- ensure that substantiated allegations of non-respect for fundamental rights in all relevant activities in relation to the screening, are dealt with effectively and without undue delay, to trigger such investigations where necessary and to monitor the progress of such investigations.

**The independent monitoring mechanism shall cover all activities undertaken by the Member States in implementing this Regulation.**

- ~~- to ensure compliance with EU and international law, including the Charter of Fundamental Rights, 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;~~
- ~~- 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.~~

**The independent monitoring mechanism shall have the power to issue annual recommendations to Member States.**

Member States shall put in place adequate safeguards to guarantee the independence of the mechanism. **National Ombudspersons and national human rights institutions, including National Preventive Mechanisms, shall participate in the operation of the mechanism and may be appointed to act as independent monitors. The independent monitoring mechanism may also involve relevant international and non-governmental organisations and public bodies independent from the authorities carrying out the screening.**

**The mechanism shall establish and maintain close links with the national data protection authorities and the European Data Protection Supervisor. Insofar as one or more of those institutions or organisations are not directly involved in the mechanism, the bodies responsible for the monitoring mechanism shall establish and maintain close links with them.**

**The independent monitoring mechanism provided for by this Article shall carry out its tasks on the basis of spot checks and random and unannounced checks.**

**Member States shall provide the mechanism with access to all relevant locations, including reception and detention facilities, individuals and documents, insofar as such access is necessary to allow the mechanism to fulfil the obligations set out in this Article. Access to relevant locations or classified information shall be granted only to monitors having received the appropriate security clearance issued by a competent authority in accordance with national law.**

~~The Fundamental Rights Agency~~**FRA** shall issue general guidance for Member States on the ~~setting up of such~~**establishment of a monitoring** mechanism and its independent functioning. ~~Furthermore, Member States may request the Fundamental Rights Agency~~**FRA** 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.~~

**The Commission shall take into account the findings of the independent monitoring mechanisms in the assessment of the effective application and implementation of the Charter according to Article 15(1) and Annex III of Regulation (EU) 2021/1060 of the European Parliament and of the Council [Common Provisions Regulation].**

\_\_\_\_\_