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NOTE

From:	Presidency
To:	JHA Counsellors/Mixed Committee (EU-Iceland/Liechtenstein/Norway/Switzerland)
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

In view of the Informal VTC of the JHA Counsellors (Frontiers) meeting on 19 May 2021, delegations will find enclosed a revised Presidency compromise proposal. This document contains an amended text of Articles 1-21 of the 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. Changes to the original text (as contained in document ST 11224/20) have been placed in **bold** or marked with ~~strikethrough~~. Changes to the previous version as contained in WK 5047/21 are **shaded in grey** and have been placed in **bold italics** or marked with ~~strikethrough italics~~.

Delegations are also informed that a Presidency compromise proposal on the recitals will be issued on Monday 17 May 2021.

Draft compromise 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

Article 1

Subject matter ~~and scope~~

In order to strengthen the 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 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.

~~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

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 (TDANN 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

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.~~

Article 3a - NEW

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(3) 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 3(x)] of that Directive.

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(x)] 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.

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.**
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.**

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.
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.

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).

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.~~

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, as 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) 2016/679¹ [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 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 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).**

¹ 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

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) 2019/818².
- ~~2. **When the hit is obtained following a query against the SIS, the screening authorities competent authority shall, through consult the SIRENE Newtork, consult the Bureau of the alert issuing Member State in accordance with Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862.**~~

² 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 ECRIS-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 statelessness**~~nationalities~~ 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 authorities shall also specify whether the data referred to in points (a), (b) and ~~(f)~~ (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 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,

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].*

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 Council³, 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.”

³ 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.