



Council of the European Union
General Secretariat

**Interinstitutional files:
2020/0278(COD)**

Brussels, 17 December 2020

WK 14827/2020 INIT

LIMITE

FRONT

IXIM

CODEC

COMIX

WORKING PAPER

This is a paper intended for a specific community of recipients. Handling and further distribution are under the sole responsibility of community members.

WORKING DOCUMENT

From:	General Secretariat of the Council
To:	Working Party on Frontiers
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 MS replies to the questionnaire on Article 4

In view of the Informal VTC of the members of the Working Party on Frontiers on 18 December 2020, delegations will find enclosed a compilation of MS replies to the questionnaire on Article 4 of 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.

Table of contents

AUSTRIA.....	2
BELGIUM	4
BULGARIA	7
CROATIA.....	12
CYPRUS	16
CZECHIA	20
DENMARK.....	23
ESTONIA.....	25
FINLAND	27
FRANCE	30
GERMANY.....	37
GREECE.....	40
HUNGARY	42
LATVIA	45
LITHUANIA.....	49
LUXEMBOURG	52
MALTA.....	57
NETHERLANDS	59
POLAND.....	62
PORTUGAL	64
ROMANIA.....	66
SLOVAKIA	71
SLOVENIA.....	73
SPAIN.....	75
SWEDEN	78
ICELAND	80

AUSTRIA

1. **How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**
 - a. **Air Borders**
 - b. **Land Borders**
 - c. **Sea Borders**
2. **Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**
3. **What specific legal limits or practical challenges are associated with the aforementioned measures?**
4. **Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?**
5. **Which of the above-mentioned measures are most commonly used at your external borders?**
6. **Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?**
7. **In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?**
8. **What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?**

First of all, it must be pointed out, that the **prevention of secondary movements at the external borders is essential for the effectiveness of the screening and all subsequent procedural steps.** In order to prevent absconding of asylum seekers and other migrants at the external border's **concrete provisions in European Union law** are required. Therefore, rules on **detention**, (like Art. 8 of the RCD) should be included in the Screening-Regulation.

Prevention of entry in the meaning of Art. 14

The 6 international Airports are the only external Schengen Borders of Austria. Currently internal border controls are reintroduced at the land border to Hungary and Slovenia.

The Aliens' Police Act foresees in Art. 41 prevention of entry and rejection at the Border (like Art. 14 of SBC).

(1) Public security service officers shall be authorised to prevent entry of aliens attempting to unlawfully enter the federal territory.

(2) Public security service officers shall be authorised to prevent entry or onward journey of aliens attempting to enter or having entered the federal territory on the occasion of border checks at land border crossing-points as well as at airports, in ports and in train traffic within the border control area [...]

(3) A decision on the admissibility of entry shall be taken, after questioning the alien, by reason of the facts of the case that have been made credible by him or are known otherwise. Rejection at the border shall be entered in the alien's travel document. Such entry shall be deleted at the request of the person concerned if found unlawful by the Independent Administrative Review Board.

Measures to Ensure Rejection at the Border are regulated in article 42 of the Aliens' Police Act.

By law "aliens" can be instructed to remain at a specified place within the bordercrossing area (At the land borders e.g. rooms for this purpose + land vehicle / air border: e.g. special rooms + aircraft). At the land border, aliens are free to leave the territory at any time.

In par. 3, the regulations of the administrative penal act apply for aliens whose rejection at the border is ensured.

(1) If an alien who is to be rejected at the border cannot leave the bordercrossing area immediately for legal or practical reasons, notwithstanding his right to leave the federal territory any time, he may be instructed to remain at a specified place within that area for the period of such stay as to ensure that rejection at the border is carried out.

(2) Aliens whose entry took place on board of a carrier's aircraft, land vehicle or vessel may be prohibited to disembark from such vehicle or be ordered to board a specific vehicle in which they will leave the federal territory as to ensure that rejection at the border is carried out.

(3) In the case of aliens whose rejection at the border is to be ensured, art. 53c paras (1) to (5) of the Administrative Penal Act 1991 shall apply to their residence at a place specified for such purpose.

The Austrian asylum procedure at the airport

Moreover, in Austria there is a **special airport procedure** in place, if an asylum seeker arrives at the **airport** and applies for asylum: After applying for asylum in front of a border guard the asylum seeker is registered, questioned and then transferred to the Federal Office for Immigration and Asylum at the airport. **An asylum seeker is only permitted to enter Austria and admitted to the actual asylum procedure upon authorization of the first-instance asylum office.** The asylum office may **refuse entry** into Austrian territory if the asylum seeker has not claimed an act of persecution within the meaning of Article 9 par. 1 of the Qualification Directive or if there is no need to take a decision on the merits (for example the responsibility of another Member State).

Other measures to avoid absconding in the Austrian asylum system

The Austrian legislation furthermore foresees measures in order **to ensure the presence of the asylum applicants** during the admission/asylum procedures as alternatives to detention, for example **territorial restrictions, residence obligations and registration obligations**. Some of these restrictions are set by law (**territorial restriction during the admission and asylum procedure, periodic registration obligation during the admission procedure**) and others will be imposed after an individual and thorough examination by the first-instance asylum office, the Federal Office for Immigration and Asylum (**residence obligation during the asylum procedure and after a final and enforceable return decision**).

BELGIUM

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**
 - a. Air Borders**
 - b. Land Borders**
 - c. Sea Borders**

Within the context of the EU-external borders, Belgium has 13 recognized EU border crossing points (six seaports, six airports and one land border) and two border sections (one maritime border section and one land border section). The two border sections consist of the Belgian coast (maritime border section) and the Eurostar link between Belgium and the United Kingdom (land border section). At the Eurostar railway terminal, the arriving Eurostar trains are not checked by the Belgian police authorities. Upon departure from the United Kingdom, the passengers are checked by the French police, who perform the Schengen entry checks.

Given its geographical location, Belgium has no large (im)migration threat at its external borders and is not confronted with a large number of illegal border crossing attempts from third countries, nor with large scale SAR operations.

The general border procedure to ensure that a third country national refused entry does not enter the territory (art 14 (4) of SBC) consist of the transfer of the TCN to another specific facility, where he/she is held until the date of the effective return. These specific locations are closed centers or specific open facilities for families with minor children (the community based family units).

Despite being located on the territory, from a legal point of view, these facilities are considered as a location at the border. We thus make use of a legal fiction. Hence, the TCN's under 14 (4) of SBC do not enter the territory from a legal point of view.

This border procedure apply at airports and seaports, both for TCN refused entry who apply for international protection at the borders and for those refused entry who do not apply for internal protection.

Certain specific exceptions may apply, for example for unaccompanied minors.

- 2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**

See answer on question 1.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

Whilst capacity in closed centers or family units is limited, the current capacity is sufficient to face the number of refusals of entry delivered at Belgian BCP's.

The detention in a closed center or family unit is regulated by the Belgian national law, that specifies the maximum length and the legal conditions under which the immigration authorities can (continue to) maintain a TCN.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

If a person is suspected of not meeting the conditions of entry or exit, he/she is subject to a more thorough check by the second line. If the conditions are not met, the person is taken into administrative custody and the Immigration Office is contacted. Until the Immigration Office reaches its decision, the person remains under the responsibility of the police. During this time (usually a maximum of 12 hours), the normal rights as citizen are respected, but the person is not authorized to leave the place and is considered as being administratively arrested.

Once the Immigration Office has taken a decision, the latter is communicated to the police force which executes it. In the event of a refusal of entry, the decision is communicated by means of the standard form for refusal of entry, as provided for in Part B of Annex V of the SBC. Each decision to hold a TCN in a specific location is taken on an individual basis and is motivated in fact and law.

The decision is notified to the TCN together with the standard form of decision of refusal of entry into the Schengen area. Both decisions can be separately appealed against at the court (appeal against the decision of refusal of entry and appeal against the decision of detention).

5. Which of the above-mentioned measures are most commonly used at your external borders?

The answer under question 4 is the standard procedure used at the external border.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

There is only one standard procedure in Belgium for TCN refused entry at the external border.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Until now, the national capacity foreseen to hold TCN's during the border procedure has been sufficient and no emergency situations linked to migration have taken place at our external borders the last 10 years.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

Given our geographical location, we are not confronted with the cases TCN's who fall under the scope of art. 3.1 of the screening proposal.

For third-country nationals who apply for international protection at external border crossing points or in transit zones and who do not fulfil the entry conditions of art.6 SBC (art.3.2 screening proposal), these are currently held in the specific facilities considered as border facilities. Both at the BCPs as in these facilities, large parts of the controls proposed in the screening proposal are already performed, as a part of the existing procedures and verifications.

As many questions remain open and discussions on the proposal are still ongoing, it is difficult to assess what additional legal and practical steps should be taken to implement the screening proposal.

We nevertheless already identified the following attention points:

- Ensure that the time-limits foreseen in the screening proposal are compatible with the national legislation for the detention of TCNs.
- Making sure the screening will not be subject to any appeal possibility

The designation of the competent authorities to carry out the screening (determination of the appropriate staff to perform the different controls, ensure sufficient resources, ensure the training and the creation of new standard procedures to be followed).

BULGARIA

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

The refusal of entry is issued only at the border crossing point, before the physical crossing of the state border and the person is not allowed to enter the territory of the country at all. This is the best measure to prevent physical entry based on an issued refusal. The grounds for refusal of entry are in accordance with the Schengen Borders Code. The person who has been refused entry is given a standard form for refusal of entry at the border in accordance with Annex V, Part B of the Schengen Borders Code, which also states the reasons for the refusal. The refusal is subject to immediate execution and the appeal against it has no suspensive effect.

Consequences of the decision for refusal of entry depending on the type of border are:

a) Air Borders

As the most effective measure to prevent the entry at air borders, we define the role of carriers and their responsibility to return the person who has been denied entry.

In most cases, the person is returned with the same flight. In cases where the return cannot be executed in a short time, the person who has been refused entry to Bulgaria shall be accommodated in the specially designated facilities for temporary accommodation of persons refused entry (as provided in the Updated EU Schengen Catalogue on external borders control, return and readmission). These facilities are located in a transit zone, which is why it is considered that the person is not physically on the territory of the country. Such facilities are constructed, operated and used at the four international airports in Bulgaria.

b) Land Borders

According to the national legislation, foreigners shall enter Bulgaria and leave its territory only at the border crossing points. For third country nationals detained outside the zones of the border crossing point for illegal crossing of the border of Bulgaria, the procedure described in article 14 of the Schengen Borders Code is inapplicable because a crime has been committed. Such persons are issued a return decision according to article 6 of Directive 2008/115/ EC.

After a refusal of entry to Bulgaria at the land BCP has been issued, border police authorities are responsible to guarantee that the person will go back to the neighboring country of arrival. The border authorities of the neighboring countries allow the person to enter their territory if there is indisputable evidence that the same person has left their territory according to the established procedure, namely that the person has passed a border check and has an outbound border stamp in a travel document.

Practice shows that in cases where the foreigner has a travel document, but there is no direct evidence of legal departure from the neighboring country, border police officers should establish the way the foreigner reached the Bulgarian border crossing point by conducting a search. Provided that after notifying the border authorities of the neighboring country, they confirm that the foreigner has legally left their country, but for a specific reason, the crossing is not certified with a border stamp, the person is allowed to enter the territory of the neighboring country.

All these activities of the border police authorities are out of the scope of the Return Directive, as Bulgaria benefits from the derogation provided for in article 2 (2) of the Directive.

If the neighboring country does not confirm legal exit from its territory and due to the impossibility for the person to remain physically in the area between the two border crossing points of Bulgaria and the neighboring country, other ways are sought to remove the person back to the neighboring country. One such way is the implementation of bilateral readmission agreements. In this case, the person is issued a compulsory administrative measure for accommodation in special homes for temporary accommodation of foreigners (closed type) and a return decision. The person is physically on the territory of the country, but from a legal point of view the person is not allowed to enter and has no right to move freely based on the return decision and the administrative act for imposing the compulsory administrative measure for detention in centre. It should be noted that in these cases one of the biggest challenges is the impossibility to return the person to one of Bulgaria's neighboring countries, as this country does not apply the bilateral readmission agreement and the agreement at EU level for third country nationals and stateless persons.

For each case of refused entry of a foreigner, who goes back to the neighboring country, the border guards at the green border are immediately notified in order to prevent possible subsequent attempts for illegal entry in Bulgaria.

c) Sea and River Borders

There are fewer cases of refusal of entry at sea and river borders compared to their number at land and air border, due to the smaller number of passengers using water transport, as well as due to the possibility of obtaining preliminary passengers and crews data through the National Center for Electronic Document Management of Maritime Transport and the Electronic Document Management System for River Transport, which the border guards check before the arrival of the ship. When a refusal of entry is issued, the person stays on the ship until it sails under the responsibility of the captain of the ship by virtue of a written order issued by the border guards, ie. the person is not physically on the territory of Bulgaria. There is a sanction for the captain of the ship if he/she allows the disembarkation of foreigners who do not have the required travel documents or visa.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Generally when issuing a refusal of entry to Bulgaria, when no evidence of a crime has been established during a border check (for example, document crimes, persons hidden in vehicles, etc.), no measures shall be taken, including detention within the meaning of article 5 of the European Convention on Human Rights.

In case of established data for a committed crime (for example, document crimes, persons hidden in vehicles, bypassing a border check, etc.), the person is detained with a detention order (arrest) for a period of 24 hours, under conditions regulated by the Law on the Ministry of interior, which correspond to the provisions of article 5 of the European Convention on Human Rights.

Provided that a foreigner who does not present a travel or identity document or present a document that has been transferred, corrected, forged or false arrives at the border crossing point, the person is detained in order to establish his/her identity and the way of reaching the border crossing point.

Illegal crossing of the state border of the Republic of Bulgaria is a crime according to the Criminal Code of the Republic of Bulgaria. In this regard, for illegal entry into the territory of the Republic of Bulgaria, pre-trial proceedings for a crime under article 279 of the Penal Code shall be initiated, for which the respective competent District Prosecutor's Office shall be notified and shall act in accordance with the instructions given by the duty prosecutor.

When foreigners are detained, an initial police search is carried out at the place where the person is detained, in order to find weapons and dangerous means that could endanger the lives and health of both the detained and the police officers.

The detained third country nationals are then taken to the administrative region of the respective Border Police Department, where all detained persons are issued a police detention order for 24 hours and they fill in a declaration for their rights. This declaration includes - the right to a lawyer protection, health issues, the right to notify a family member or other interested person, the right to a special diet, the notification to consular authorities, etc. A full police search is carried out, for which a report is prepared. At the same time, signs (marks/tattoos) of complicity or belonging to terrorist groups, etc. are sought. Biometric data is taken from the detained person and registered in the national AFIS system and EURODAC system in accordance with the requirements of Council Regulation 603/2013. Medical examination is carried out and the persons are accommodated in the facilities for detained persons for a period of 24 hours.

Subsequently, they are subject to a series of procedures aimed at verifying, on the one hand, the national information files, the SIS, etc., and, on the other hand, taking their biographical and biometric data for further verification, including through the use of the capacity of law enforcement authorities of other Member States and partner countries (Interpol, Europol, etc.).

In the presence of identity documents, an expert report is prepared to establish their authenticity. The percentage of detained persons for illegally crossing the "green border" is extremely low, close to zero.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

In certain cases it is not possible to establish the identity of the detained person within the period of the detention order (24 hours). In these cases, the persons are accommodated in special accommodation places.

One of the limitations in the practical application of the described measures is the impossibility to return persons to neighboring countries due to non-compliance with a readmission agreement.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

The refusal of entry to Bulgaria is an administrative act, which is issued only on the basis of a reasoned decision, stating the exact reasons for the refusal. The decision is taken by the border police officer and is subject to immediate execution.

The person is not allowed to physically enter the territory of Bulgaria from the moment of issuing the refusal and this happens automatically.

In cases where the person has to be accommodated in a special home (closed type) to ensure the execution of an issued return decision (see above the answer to question 1, item b), then the measure enters into force on the basis of individual decisions, issued for the specific person for imposing compulsory administrative measure and for return.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Depending on their place of establishment, the following procedures may be applied to third country nationals:

- at the border crossing point of the country, regardless of the type of border (river, sea, land, or air), for the persons who do not meet the conditions for entry, as indicated in article 6 of Schengen

Borders Code, a refusal is issued in accordance with the provision of article 14 of the Code and they are not allowed physically on the territory of the country;

- for the citizens of third countries, detained outside the zones of the border crossing point for illegal crossing of the border of the Republic of Bulgaria, the procedure, described in article 14 of the Schengen Borders Code is **not applicable**. These persons are detained because they have committed a crime. They are accommodated in the special homes for temporary accommodation of foreigners (closed type). A return decision is issued in accordance with article 6 of Directive 2008/115 / EC.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse/absconding most effectively?

Refusal of entry prevents the physical entry into the territory of a person who does not meet the conditions for entry. Here the effect is present insofar as the person appears at the border crossing point and the neighboring country assists in his removal to its territory.

In cases where a crime has been committed and the refusal of entry cannot be applied, the most effective measure against abuse is to detain the person for a certain period. However, an individual assessment should be made on a case-by-case basis to ensure that fundamental human rights are respected, with alternatives to detention applied where possible.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

We believe that in the case of exceptional migratory pressure, no measure can be effective and prevent entry. This makes the pressure exceptional. The measures are appropriate only under normal conditions, when the pressure can be managed and the migration system can function normally.

In a situation of exceptional migratory pressure, it is very important to bear in mind that, on the one hand, there is the question of the protection of the EU's external borders and, on the other hand, the question of the principle of non-refoulement. In such situation, can the existence of abuses be discussed at all?

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

According to the national legislation, entry into Bulgaria is not authorised to persons who have been refused entry (ie they are not physically admitted to the territory) and to persons detained due to illegal crossing of the border (ie even though they are physically on the territory of the country their stay is not legal). In this sense, Bulgaria is currently fulfilling the obligation under article 4 (1) of the Screening Regulation. What we cannot fulfill is the obligation under article 4 (1) in connection with article 4 (2) and article 14 of the Screening Regulation. The problem for us arises from the application of the legal fiction of refusal of entry, ie. from the proposal to issue a refusal of entry at a later stage or to allow entry at a later stage when the person is physically on the territory of the country.

Bulgaria does not see the added value of the application of the legal fiction, as Bulgaria achieves the intended results by applying article 13 and article 14 of the Schengen Borders Code. We suggest that an alternative to refusal of entry should be considered. In cases where the person is on the territory of the country and it is established that the person does not meet the conditions for entry and does not seek international protection, MS should be able to choose either to refuse entry or to issue a return decision. In this way, all MS will be able to keep their national practices and the desired result will be achieved.

CROATIA

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

If a third-country national entering the country across a border crossing point fails to meet the entry conditions and does not fall within the category of persons referred to in Article 6, paragraph 5 of the SCB, a decision on refusal of entry is issued at a border crossing point on land, maritime or air borders and entry into the country is not allowed (no appeal to the decision is allowed, but an administrative dispute may be instituted). Depending on the means of transport that the person is using, in case of public transport being used, the carrier who brought the person is obligated to take the person from the border crossing point or from the Republic of Croatia without delay and at its own expense and, if this is not possible, the carrier is obligated to find another mode of transport at its own expense or, if another mode of transport is not immediately possible, to assume the costs incurred during the third-country national's stay and return.

If a third-country national fails to make an application for international protection, a return procedure will be initiated. The return procedure includes identification, taking of biometric data (fingerprints via a EURODAC device, photograph), registration, establishing all personal circumstances, as well as the circumstances related to irregular migration, after which a decision on return will be taken. A decision on return may be taken without imposing an entry and stay ban, in which case a time limit will be set for a third-country national to leave the EEA on his/her own, and it may be taken with an imposed entry and stay ban, in which case a time limit may also be set for voluntary departure or forcible removal may be imposed.

If during the procedure it is established that there is a risk of avoidance, once the decision on return is taken, the third-country national will not be released to leave the Republic of Croatia voluntarily. Rather, he/she will be placed in detention.

As an alternative to detention, the Aliens Act prescribes a possibility of imposing more lenient measures. They include deposit of travel documents, deposit of a certain amount of funds, ban on leaving the address of accommodation, visits to a police station at a designated time.

If elements of a criminal offence are established during border checks, the person is taken to the competent court under police escort, after which, depending on the decisions made by the court, measures can be taken for the person to leave the Republic of Croatia or the person can be placed in detention, as described above.

If a person applies for international protection at a border crossing point, an interview is held at the border crossing point and the person is fingerprinted, after which the procedure concerning the application is continued at the border crossing point if there are appropriate conditions for this at the border crossing point, or the person is sent to the Reception Centre for International Protection Applicants located within the territory of the Republic of Croatia.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

During a return procedure, third-country nationals will be placed in detention if it is established that there is a risk that they might avoid the obligation to leave the EEA, that is, the Republic of Croatia, or if their return cannot be ensured in any other way. The circumstances which might indicate to a risk of avoidance include the following:

- a third-country national failed to provide personal or other information or documents or has provided false information
- a third-country national has used a counterfeit or someone else's document
- a third-country national has discarded or destroyed his/her identity document
- a third-country national has refused to be fingerprinted
- a third-country national has prevented, by force or fraud, his/her escort for the purpose of forcible removal into the country in which he/she is being forcibly removed
- a third-country national has failed to comply with more lenient measures that he/she was previously imposed (deposit of travel documents, deposit of a certain amount of funds, ban on leaving the address of accommodation, visits to a police station at a designated time)
- a third-country national has entered into the EEA, that is, the Republic of Croatia prior to the expiry of his/her entry and stay ban
- a third-country national has stayed in another EEA Member State from which he/she illegally entered directly into the Republic of Croatia or transited through a third country (unauthorised secondary movement).

A third-country national may be placed in a detention centre for a period of up to 6 months with a possibility to prolong this for yet another 12 months (a total of 18 months).

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

Detention is possible only if the person is already in the territory of the Republic of Croatia. Detention cannot be imposed on a person who is not in the territory of the country but is still in a screening phase to establish whether he/she meets the entry conditions.

Challenges associated with the return procedure include the misuse of the international protection institute by third-country nationals by which they try to delay and slow down the return procedure, non-cooperation of third-country nationals when it comes to establishing their identity, misuse of the institute of unaccompanied minors in order to avoid detention and their subsequent escape from an open-type facility.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

With all of the aforementioned measures, actions are taken on an individual basis, decisions always need to be taken individually.

Personal circumstances of each individual third-country national are determined during the return procedure. Likewise, when applying the measures for ensuring return, the best interest of the minor will be taken into account as well as the needs of other vulnerable persons, family life and health of the third-country national who is subject to the said measures.

It must be pointed out that, pursuant of the Aliens Act, the following are considered to be vulnerable persons: minors, persons with disabilities, the elderly, pregnant women, members of single-parent families with underage children, victims of trafficking in human beings, victims of torture, rape, or other form of psychological, physical or sexual violence such as victims of female genital mutilation and persons with mental disabilities. However, pursuant to the Return Directive, other persons may also be vulnerable persons if their vulnerability is determined during the return procedure.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Most commonly, when entry is refused on border crossing points of the external border of the Republic of Croatia, decisions are issued on the refusal of entry and there are generally no problems with returning such third-country nationals.

Those persons for whom it is determined that they have no right to stay in the territory of the Republic of Croatia are subject to the Return Directive. Please see answers to questions 1, 2 and 4 for the description of the said procedure.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

The optimum measures aimed at preventing illegal entries involve taking quick and efficient action with the aim of discouraging third-country nationals from misusing the institute of international protection while at the same time providing protection to those third-country nationals who are really in need of such protection.

A quick and efficient procedure for processing applications for international protection as well as in cases where negative decisions are reached about applications for international protection, and a quick and efficient return procedure, most certainly have an impact on discouraging third-country nationals from their intentions to misuse the institute of international protection.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

The optimum measures aimed at preventing entries involve taking quick, efficient and fair action with the aim of discouraging third-country nationals from misusing the institute of international protection while at the same time providing assistance to those third-country nationals who are really in need of such assistance.

More precisely, persons who are encountered illegally crossing the state border should be subject to quick and efficient asylum procedure (if they make an application for international protection), or to quick and efficient return procedure. In that regard, it must be pointed out that one of the key elements for efficient return is quality cooperation with third-countries (in terms of identification, obtaining travel documents, complying with readmission agreements).

Likewise, the optimum solution in cases of exceptional migratory pressure, regardless of the type of border in question, is the establishment of a system of solidarity which would be automatically activated in line with precisely established criteria.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

We believe that a pre-entry procedure could represent significant additional burden for those Member States that are located on the external border and that the solidarity mechanism related to return procedures, where Member States can choose between relocation and return sponsorship, will not be sufficient for preventing the creation of hot spots on external borders.

As has already been emphasized in answer to question 7, the external dimension is key for efficient return. This means strengthening cooperation with third countries, countries of origin and countries of transit. However, the strengthening of the external dimension will only have a mid-term and long-term impact. It is necessary to find tools with which the number of efficient returns could be increased in the short-term.

We believe that the creation of hot spots on external borders would be prevented by establishing a certain quota for the number of persons relocated with the aim of return. In that regard, Member States which would take a certain number of persons would be responsible for the complete return procedure, from obtaining travel documents to organising return operations with the support of Frontex.

Furthermore, legal basis needs to be provided on the EU level which would make it possible that the area, where those third-country nationals who are subject to screening are being detained until entry or refusal of entry into the EU, be considered an area with restricted freedom of movement that cannot be left without the permission of the competent authority. Likewise, a legal basis needs to be provided so that instructing someone to and keeping them in the said area would not be considered granting entry, but rather, that the person being screened is undergoing the check of legality of their entry request.

CYPRUS

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

Cyprus, as a Schengen Member State, and in accordance to the Accession Treaty of 2003, is bound by the Schengen Acquis, including the provisions of Article 14 (4) concerning denying entry to a TCN who does not fulfil the entry conditions as per Article 6 of the SBC and is not considered a “bona fide visitor”. For a TCN to be refused entry, a reasoned decision stating the specific reasons for the refusal of entry, has to be taken by the Border Guard in charge the BCP. The following are the conditions that a TCN must meet in order to be allowed to enter the Republic: <0000> have a valid travel document or document that entitles the holder to cross the border and meets the following conditions:

- (i) be valid for at least three months after the scheduled date of arrival in Cyprus (in the event of a justified emergency, this obligation may be waived,
- (ii) issued within the previous decade, possession of a valid Cypriot visa, Schengen visa (double / multiple), a Residence Certificate issued by an EU Member State (outside the United Kingdom and Ireland), or a permit issued by the Immigration Officer is required, sufficiency of means of subsistence (cash, credit cards) based on the average daily cost of living that is valid in Cyprus and amounts to approximately 50 euros per day, hospitality form from a Cypriot citizen or legally residing EU citizen or Third Country National, bank guarantee, paid hotel reservation for the entire duration of his/her stay, paid return ticket, not be registered as a prohibited immigrant or a wanted person in the relevant databases, not be considered a person who may be a risk to public order, internal security and public health. In case of refusal of any TCN, the written notification procedure of Article 8 (3) and (5) of the Schengen Borders Code if followed. As CY has no land borders, the measures taken to prevent the entry of TCNs by air and sea are the following:

Continuous surveillance of the blue borders (sea and air) through operational activities such as patrols and static checkpoints at key points, both at sea and along the green line for the prevention and control of irregular migration and cross-border crime, development of the Coastal Observation System ("SPS"), which provides the ability to locate, recognize, identify, and monitor targets in the marine environment, within and beyond the territorial waters of the Republic of Cyprus,

The utilization of a number of long-range thermal cameras and day / night cameras in selected fixed points of the Republic and mobile units, cooperation between the competent authorities of the Republic (Police, National guard) at the sea and air borders, so as to prevent any attempt by TCNs to enter the Republic illegally, bypassing the official points of entry and thus avoiding them mandatory controls, locating and apprehending TCNs that illegally cross the territory of the Republic of Cyprus by sea, or violating the status of the green line coming from the territories where the Republic does not exercise effective control (they are under Turkish occupation), making use of FRONTEX capabilities in human resources and technical equipment, significantly improving operational capabilities, maintaining close cooperation with neighboring countries (Lebanon, Egypt, Israel) among others, information exchange in order to prevent the terrorism, THB, illegal immigration and other forms of cross-border crime.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

The legal basis with regard to the apprehension (restriction of the right to liberty as per Article 5 of the ECHR) of irregular migrants, is the Aliens Law Cap. 105. According to section 12(1)(5), any alien who has entered the territory of the Republic through a point other than the official points of entry, is guilty of a criminal offence and according to the criminal procedure law Cap. 155, section 14(1)(b) may be arrested without a judicial warrant. According to section 6(1)(1A), among others, any alien who enters or resides in the territory contrary to a prohibition, condition, restriction or limitation in the Aliens Law or the Regulations or in any permit granted under the Law, is considered a prohibited migrant. Being a prohibited migrant, he may be arrested without a judicial warrant.

The interception and apprehension of irregular migrants, takes place after active searches, random police checks and targeted operations organized by the Aliens and Immigration Unit (AIU). In addition, we have a considerable number of irregular migrants who at their own initiative appear at the Regional Branches of the AIU, Police stations or other departments of the civil service.

The procedure to apprehend illegal migrants is as follows:

- the police (mostly the AIU) apprehend and transfer the migrant to a police detention center (may be detained without a judicial warrant for up to 24 hours),
- meanwhile the competent AIU branch, forwards a letter to the Director of the Civil Registry and Migration Department (hereinafter “CRMD”), requesting the issue of detention and deportation orders,
- issue of detention and deportation orders by the Director of the CRMD (if a detention order is not issued within 24 hours from the time of apprehension, the immigrant is released),
- execution of the detention order by the AIU,
- transfer of the detainee from the police detention center, to the detention center for prohibited immigrants at Menoyia (MDC),
- launch of the return procedure by the competent AIU branch in cooperation with the Repatriations Coordination Office (RCO) and the CRMD,
- return operation conducted by the AIU.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

The main challenge in relation to border control faced by Cypriot authorities are rather practical than legal, as the Cypriot legal framework has recently been revised.

Recent measures to curb the migration flow, among others included:

- revising the procedure for admission to colleges for foreign students aiming at the prevention of sham marriages (asylum seekers enter the country pretending to be college students or to enter into sham marriages - between 2017 and 2019, some 3,214 had filed for asylum while another 2,239 entered into marriages with European nationals “which are justifiably deemed as sham marriages)
- created a list of 21 ‘safe countries’ (Asylum applications from TCNs from countries considered ‘safe’ will be considered profoundly unfounded unless the applicant provides proof that his life is at risk if returned to his country of origin)
- Limiting the time it takes to process asylum applications – target period maximum of 50 days.
- Cutting the time an asylum-seeker have to appeal a rejected claim, from 75 days to 15.

The main challenge we are faced with, are the continuous irregular migration flows from Turkey to Cyprus. It is well known that the northern part of Cyprus is under Turkish military occupation and the control of this part of its maritime borders is impossible. The overwhelming majority of irregular migrants arrive to CY after having entered Turkey legally. They pass by air or by ferry to the occupied areas and then are smuggled through the cease fire line (green line) to the areas under the Government's effective control, where they seek asylum. This year alone, more than 3800 persons who have illegally entered the territory, applied for asylum. The overwhelming majority of these applications are profoundly unfounded; however, all need to be examined by the Asylum Service and the right access to justice has to be respected. The Covid-19 pandemic has obliged both asylum and border control authorities to urgently revise their operating procedures in an effort to prevent the spread of the infections in reception and identification centres as well in detention centres, in line with the Ministry of Health protocols. Restrictions and preconditions applicable to overseas travel, have dramatically reduced the number of commercial flights and connections, bringing the returns procedures almost to a halt, further stretching the limited reception and detention capacity.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

All measures taken in TCN rescue cases are based on contingency plans and protocols and come into force as soon as the competent services involved are notified (Aliens & Immigration Service, Port and Marine Police Unit, Police Aviation Unit, Asylum Service, Civil Defense Service, Medical Services, Social Welfare Service, Ministry of Interior, Ministry of Justice & Public Order). The same applies in the case of TCNs crossing the green line in groups. In the case where a TCN is apprehended by the police on grounds of illegal entry of stay, they are detained for up to 24 hrs in a police detention center and the CRMD director is notified as described above.

5. Which of the above-mentioned measures are most commonly used at your external borders?

The following are the most commonly used measures at our external borders include the Continuous surveillance of the blue borders (sea and air) with electronic means and operational activities such as patrols / static checkpoints at key points, both at sea and along the green line for the purpose of preventing combat irregular migration, trafficking - movement of migrants and cross-border crime.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Among the above measures that have the most effective effect and deterrence in the protection of our external borders are the following:

The Continuous monitoring through the Coastal Observation System ("SPS"), is very effective in giving an early warning and preventing illegal entry in the territory through the coastline Detention of prohibited immigrants or asylum seekers where there are grounds to believe that the TCN is abusing of the international protection, system will abscond during the asylum procedure or violate a return decision.

- 7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?**

See answer to Q6.

- 8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4(1) of the proposed screening regulation at your external borders?**

None.

CZECHIA

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**

- a. Air Borders**

CZ does not apply the Directive 2008/115/EC to third-country nationals, who are subject to a refusal of entry, and applies the exemption provided by Art 2(2)(a) of the Directive. In case of refusal of entry, the foreign national concerned is issued a form for refusal of entry where he/she is also informed about a possibility of lodging an appeal (new examination of the case). The Airline Company which transported the foreign national is obliged to assume responsibility for the person again and transfer him/her back within 7 days upon written instruction from Police. Appeal against the decision to refuse entry does not have suspensive effect. The Airline Company has to bear the costs of the stay and return of the person in question.

During the period between the refusal of entry and the departure the foreigner remains in the non-Schengen area of the airport. He/she is not restricted in his or her liberty, but at the same time he or she may not be admitted to the territory, including the Schengen area of the airport. At all airports the police supervise that the foreigner does not leave the non-Schengen area of the airport before the departure. If the person can only depart from another airport (in case of smaller airports), the police shall transport the person to the respective airport and during the transport the person has the status of a detained person (by law). The same applies if the person is in need of emergency health care and the police transports the person to a medical facility.

Facilities for persons who have been refused entry at the airport

The only international airport which has a separate secured international transit zone with the corresponding services is the Václav Havel Airport Prague. Within the zone there is a transit hotel, seating areas and internet access. Persons who have been refused entry (but haven't been detained within the criminal proceedings), can stay in the transit zone, including in the hotel.

Other airports do not have a separate international transit zone. However, in accordance with the State Borders Control Act and the implementing ordinance, all international airports which transport more than 5000 passengers on external flights per year shall have at least a basic facility for non-admitted persons available (a room situated in the non-Schengen area of the airport with two separate parts – one for women and one for men, each equipped with two beds, a table and two chairs, the room has access to running drinking and hot water, a shower and toilets) and equipment for children.

- b. Land Borders**

- c. Sea Borders**

- 2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**

The above-mentioned measure does not involve deprivation of liberty within the meaning of Article 5 ECHR.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

As mentioned above, the carrier has to transfer the person back within 7 days upon receiving the written instruction from police otherwise a fine is imposed.

In accordance with the national law, the person who has been refused entry may not be restricted in his or her liberty, except for cases when the person presents a false/counterfeit/forged travel document. At the same time, the person may not be admitted to the territory, including the Schengen area of the airport.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

No individual decision is issued apart from the refusal of entry form and the instruction for the airline company.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Only one measure applies (Q1).

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Only one measure applies (Q1).

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

The measure explained above is suitable also for preventing entry in the event of an exceptional migratory pressure for which CZ established a contingency plan. In such a situation additional temporary facilities will be provided in cooperation with the airport operators. In case of person asking for international protection, the Asylum Act (based on Asylum Procedures Directive) enables using facility in proximity of the airport.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

“Pre-entry” nature of the screening

- CZ suggests adding explicitly that screening is not an administrative procedure.

The idea that screening is a pre-procedural phase is interesting, but has the following implications:

CZ (with support of many other Member states) insists on a clear basis for non-entrance during screening. As CZ stated, initial apprehension is a very sensitive area. Therefore, **CZ proposes the following wording of article 4/1: *During the screening, the persons referred to in Article 3, par. 1 and 2 are deemed not to be authorised to enter the territory of a Member State.*** – i.e. creating a clear state of non-entering.

Operating screening within initial apprehension time period is the most effective way – especially there is no need to issue an individual well-reasoned decision on detention. The problem is, that the current CZ law on initial apprehension does not allow for such a long apprehension time period and CZ is of the opinion that rules and time limits vary among MS. Without unification (or at least harmonisation) we will not achieve the desired effect.

CZ is of the opinion that issuing an individual decision for 3-5 days is absolutely NOT effective, because in every case, another decision on the “fate” of the person will come again after screening- either refusal of entry, or return decision or detention decision in asylum border procedure or other measures.

DENMARK

Deprivation of liberty and movement restrictions

The Danish National Police can inform, that the infrastructure of the different border types differs from the larger Danish airports to the smaller harbors. At the major border crossing points the police are present at all times. At the smaller border crossing points the police will perform random operative checks on basis of the received data for the administrative pre-control of both ships and GA-flights. The Danish Police also receives API-data on non-Schengen flights, which are processed in the police's IT-systems.

The major border crossing points have permanent equipment for border control. For the smaller border crossing points mobile equipment is used. The police can refuse an alien from entering pursuant to Article 28 of the Danish Alien Act. The competence of the police to refuse entry applies only to border control, but may be extended to cases where a person tries to evade border control and is caught immediately after crossing the border. The decision of refusal of entry shall be communicated to the alien using a specific form where the reasons for the refusal of entry shall be indicated. The alien must also sign the form.

Deprivation of liberty

Article 34 (1) of the Danish Aliens Act contains various provisions – which must be regarded as the less radical measures – in relation to the provisions on restriction of movement and detention pursuant to Article 36 (1) of the Danish Aliens Act. It must therefore always be considered if the measures in Article 34 (1) are sufficient to ensure the presence of the alien until a decision on refusal, expulsion, transfer, repatriation or removal has been taken. Such deliberation must take place before the measures under Article 36(1).

According to Article 34 (1) of the Danish Aliens Act the police may – in order to ensure the presence of aliens until a decision has been taken on the expulsion, refusal, transfer, repatriation or expulsion – provide that the alien must:

1. Deposit his or hers passport, other travel documents and tickets with the police;
2. Provide security in an amount determined by the police;
3. Stay at a location directed specifically by the police; and
4. Report at the police at specified times.

Situation 1 is typically used during the entry check if it is not possible to determine immediately whether an alien is to be admitted or whether there is to be a refusal. In this situation, the alien may be requested to deposit his passport, another travel document and ticket with the police for the purpose of examining the entry question. The provision will often be supplemented by the measures specified in situation 3 and 4. If the alien is allowed to enter, the deposit may not be maintained.

Situation 2 is not used in relation to entry checks.

Situation 3 and 4 are particularly applied in the larger Danish airports in separate non-Schengen areas prior to the entry control. In these cases it can be decided that the alien has to stay in the non-Schengen area and that the alien must meet with the “border police” at a specified time. In such cases, it will often be decided that the alien should deposit passports, travel documents and tickets under Situation 1. A request for the alien to wait in the immediate vicinity of the border control during the police's further investigations is not a formal decision under Article 34 (1) of the Danish Aliens Act (situation 3), but is considered a natural part of the conduct of the entry control by the police at the border.

In relation to border control, it will only be necessary to take measures until a decision has been taken on refusal, expulsion and until such a decision can be executed. It will typically be situations where further investigations need to be carried out in order to determine whether the alien is allowed to enter the country or whether there should be a refusal or referral to the Danish Immigration Service for a decision on expulsion. The police's decision under Article 34 (1) of the Danish Aliens Act may be appealed to the Minister of Immigration and Integration, cf. Article 48 (1) of the Danish Aliens Act.

According to Article 36 (1) of the Danish Aliens Act the police may decide that an alien need to be detained in order to ensure the possibility of refusal, expulsion, transfer, transfer or repatriation or for expulsion of the person who, in accordance with the provisions in chapters 1 and 3-5 of the Danish Aliens Act. It is a prerequisite for the use of detention under Article 36 (1), that the less radical measures in Article 34 (1) are not deemed sufficient to ensure the possibility of the refusal, expulsion, transfer, repatriation or removal. Measures under Article 36 (1) can for instance be used in cases where the alien tries to evade the procedure.

The Danish police can decide that an alien shall be detained if the following three conditions are met:

- the alien does not have permanent residence or legal residence in Denmark
- it is necessary to detain the person concerned in order to ensure the possibility of refusal, expulsion, transfer, repatriation or removal and
- the measures provided for in Article 34(1) of the Danish Aliens Act are not considered sufficient to ensure this possibility.

If the police decides that an alien should be detained under Article 36 (1) of the Danish Aliens Act, the person concerned shall be made aware of that fact and of his rights. Furthermore, a specific form shall be completed by the police and explained to the alien (if necessary by an interpreter) and the foreigner shall be given a copy of the decision. In the event of a decision of refusal of entry, the detention can be used to ensure the possibility of implementing the rejection decision.

A detention carried out in connection with external border checks may only be extended for the period necessary to ensure the purpose of detention, including:

- transfer of an asylum seeker,
- a closer examination of the entry conditions and
- the possible implementation of a decision of refusal of entry.

The police's detention decision under Article 36 (1) of the Danish Aliens Act can be appealed to the Minister of Immigration and Integration. If the alien – who is deprived of his/her liberty – is not released within 3 days the decision of the detention must be put before a judge in order to determine the legality and continued maintenance of detention.

ESTONIA

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

In case the return from the border to the country of origin is not possible, persons subject to refusal of entry are detained and placed to the detention centre. The detention of a person for more than 48 hours requires permission from the court. If the court decides that the detention of the person is not proportional measure, the person is released and the return decision is issued. In that case surveillance measures (alternatives to detention) may be applied to prevent risk of absconding. The following alternatives to detention are applicable:

- residing in a determined place of residence;
- appearing for registration at the Police and Border Guard Board at prescribed intervals;
- appearing at the Police and Border Guard Board to clarify circumstances ensuring compliance with return obligation;
- notifying the Police and Border Guard Board of the changes of residence of the alien and of his or her prolonged absence from the place of residence;
- notifying the Police and Border Guard Board of the changes in the alien's marital status;
- depositing of a travel document of a foreign country or an identity document of an alien.

The person subject to surveillance measures have the right to move freely in Estonia.

In case the return from the border is possible, the person will return to the country of origin from the border crossing point.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Detention assumes a deprivation, and not a mere restriction, of freedom of movement.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

According to Estonian Constitution the detention of a person without the authorisation of the court is permitted for up to 48 hours. In court's view the detention of the person is only permitted if the person poses a risk for absconding. Therefore the border authorities have only 48 hours to acquire information confirming the person concerned poses risk for absconding.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

Detention of persons shall be ordered in writing by administrative (for up to 48 hours) or judicial authority. Alternatives to detention shall be order in writing by administrative authority.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Usually the person subject to refusal of entry returns immediately to the country of origin and the detention is not needed.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

The most effective measure to prevent absconding is the detention. However, in Estonia it can only be applied as a last resort and for longer than 48 hours only with the permission of court. However, based to our practice we believe, that nationals of certain countries (Ukraine, Moldova, Georgia) could return voluntarily and their detention would not be proportional. Therefore the border authorities should have the possibility to decide whether to initiate

- the return procedure (and issue return decision at the border) and apply alternatives to detention if needed or
- the entry of refusal procedure (and issue decision on entry of refusal) and enforce the decision immediately.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Under the migration pressure the member states should have the possibility to decide quickly whether the person poses risk of absconding or not and whether he/she is willing to return voluntarily. If the detention of a person is necessary, detention facilities within the country should be used.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

The regulation on screening should not hinder effective returns. EU readmission agreements foresee the so-called accelerated procedure. In this case the readmission applications should be submitted within 2 working days following the persons apprehension. This means that the member states should initiate the return process immediately after the apprehension of the person staying illegally in the territory of the member state and the elements of the screening should be carried out within the return procedure.

FINLAND

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

According to the Border Guard Act (section 27), the Border Guard can conduct an investigation to establish whether foreign nationals meet the requirements for entry into, stay in and exit and removal from the country. Those being investigated are obliged to be at the investigation for a maximum of twelve hours at a time.

According to the Border Guard Act (section 28), border guards have the right, for the purpose of carrying out border control as referred to in the Schengen Borders Code, to take for example the following actions without any criminal suspicion, to ensure that third-country nationals who have been refused entry do not enter Finnish territory.

According to the Finnish Aliens Act (section 151), the border control authority shall take steps to ensure the refusal of entry in accordance with the Schengen Borders Code or refusal of entry referred to in accordance with the Aliens Act if the alien does not satisfy the conditions for entry to or residence in the country. The border control authority may decide on refusal of entry within three months of the alien's entry into the country. After that period, the border control authority shall submit a proposal to the Finnish Immigration Service to the effect that the alien be refused entry.

According to the Finnish Aliens Act (chapter 7), precautionary measures may be imposed on an alien if this is essential and proportionate for establishing that the alien meets the conditions for entry into or stay in the country or preparing a decision to remove the alien from the country or ensuring the enforcement of such a decision, or otherwise supervising his or her departure from the country.

The precautionary measures are obligation to report, handing over his or her travel document and travel ticket to border control authorities or to give them the address where he or she may be reached or giving a security for the expenses related to his or her residence and return.

If the precautionary measures are insufficient, an alien who has applied for international protection may be ordered to reside in a specified reception centre and report to the centre one to four times a day. When deciding on the number of reporting times, it is essential to ensure on the basis of individual assessment that the rights of the person on whom the residence obligation has been imposed are not restricted any more than necessary and that the purpose of the precautionary measure is achieved.

If the precautionary measures are insufficient, the alien may also be detained on the basis of an individual assessment, if:

- taking account of the alien's personal or other circumstances, there are reasonable grounds to believe that the alien will hide, abscond or in some other way considerably hinder the issue of a decision concerning him or her or the enforcement of a decision to remove him or her from the country;
- detention is necessary for establishing the alien's identity;
- the alien has committed or is suspected of having committed an offence and the detention is necessary to ensure the preparations for a decision to remove the alien from the country or the enforcement of such a decision;

- the alien has, while in detention, lodged a new application concerning international protection predominantly for delaying or disrupting the enforcement of a decision on removal from the country;
- the detention is based on Article 28 of the Council Regulation on determining the State responsible for examining an asylum application; or
- taking account of the alien's personal and other circumstances, there are reasonable grounds to believe that he or she will pose a threat to national security.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Detention (see above).

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

In some parts of Finland long distances to the nearest detention unit for aliens.

According to the Aliens Act a detained alien shall, as soon as possible, be placed in a detention unit referred to in the Act on the Treatment of Aliens Placed in Detention and on Detention Units. In case the detention units are temporarily full or the alien is detained far from the nearest detention unit, an alien can be placed in the police detention facilities (for a maximum of four days) or exceptionally be placed in Border Guard detention facilities instead of police detention facilities for a maximum of 48 hours.

However, according to the Border Guard's internal guidelines, the Border Guard detention facilities are only accepted for temporary detention for a maximum of 12 hours.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

Section 27 and 28 of the Border Guard Act take effect by law.

The grounds for precautionary measures are prescribed in the Aliens Act. Decisions are made if the use of precautionary measures is essential and proportionate. Detention decisions are based on an individual assessment according to the Aliens Act.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Investigation according to the Border Guard Act, section 27, to establish whether foreign nationals meet the requirements for entry into, stay in and exit and removal from the country (those being investigated are obliged to be at the investigation for a maximum of twelve hours at a time).

The two most commonly used precautionary measures are handing over the travel document to border control authorities and obligation to report.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Investigation according to the Border Guard Act for a maximum of 12 hours at a time. With regard to precautionary measures detention is the most effective means.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

According to the Aliens Act (section 133), if the number of migrants entering the country is exceptionally high, which makes it impossible to establish that the conditions for entry are met and to register the aliens in the normal procedure, the Government may decide in a plenary session that persons whose conditions for entry or identity are unclear may be sent to the registration centre referred to the Act on the Reception of Persons Applying for International Protection for the purposes of registration.

The government decision is issued for a fixed term, not exceeding three months, however.

A person entering the country is obliged to stay at the registration centre for the duration of the registration, unless otherwise required by the state of his or her health or for other important personal reasons.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

The actual duration of the screening process will in practice determine the choice of practical measures.

FRANCE

“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.

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”.

1. How do your authorities currently prevent entry within the meaning of Article 14(4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

Owing to its geography, France does not currently have to deal with illegal entries between the BCPs at the external land (green) and sea (blue) borders. This means that entry is only refused at France’s external borders for flows of people arriving at the air and sea BCPs. Persons refused entry are taken to a transit zone (*zone d’attente*) until onward transportation is arranged via the airline or shipping company.

Book II of the French Code of Entry and Residency for Foreign Nationals and the Right to Asylum (CESEDA) addresses refusal of entry to France and covers, in particular in its Article L.213-3, the case of third-country nationals who do not fulfil the entry conditions pursuant to Article 6 of the Schengen Borders Code to which the Article explicitly refers.

The administrative entry refusal procedure is stipulated in Article L.213-2 of the CESEDA for any refusal of entry into France. It provides for a written and reasoned decision notified to the interested party and specifying his/her right to inform or have informed the person to whose home he/she stated that he/she was to have gone, or his/her consulate or adviser of his/her choice.

The entry refusal decision and the notification of rights shall be provided in a language that the foreign national understands. In respect of this guarantee regarding the language, the CESEDA provides, in a cross-cutting manner, that when a foreign national is subject to a non-admission procedure, he/she shall state the language that he/she understands from the outset. The entry refusal decision and the notification of rights shall be translated either by the furnishing of a written document or orally by an interpreter.

This decision can concern foreign nationals who are minors whether they are accompanied or not. Article L.213-2 stipulates that special attention should be paid to vulnerable persons, especially unaccompanied minors. This obligation which mirrors the requirements of the SBC covers application of the decision and its notification, as well as to the conditions for its enforcement.

Concerning the special rights of minors

The CESEDA safeguards the rights of minors in all cases and throughout the procedure.

An unaccompanied minor who is placed and confined in a transit zone shall always be accompanied by a legal representative (an *ad hoc* administrator) designated by the judicial authorities (the Public Prosecutor). This representative shall be present in the zone alongside the child who he/she shall support and represent for all the administrative and litigious procedures relating to the refusal of entry and placement in the transit zone, without prejudice to the other guaranteed rights regarding assistance from an interpreter and lawyer.

Unaccompanied minors placed in a transit zone shall be subject to a systematic appraisal. This involves an overall assessment based on a body of evidence including a documentary search conducted by the border police force as well as a social evaluation carried out by the competent departments of the *département* council as part of welfare support services for children. This is subject to a protection measure by the judicial authorities involving personalised consideration of the conditions in which the minor may be subject to onward transportation whilst upholding his/her interests.

If applicable and subject to the agreement of the interested party and the judge for children's affairs, a medical examination shall be conducted with the results, in the event of a doubt, always being for the minor's benefit (in accordance with Article 388 of the French Civil Code).

The notion of automatic enforcement of the entry refusal decision by the competent administrative authority is explicitly set out in this Article L.213-2.

During the time that is strictly necessary to prepare for his/her departure, a foreign national who has been refused entry, who is in interrupted transit or who has applied for asylum at the border may be confined in a transit zone under the conditions that are also provided for in the CESEDA. This is obviously a systematic and mandatory principle of forcing the person to remain at the border by placement in a transit zone whenever he/she is unable to be immediately subject to onward transportation. Transit zones are located in railway stations serving international traffic that appear on a list determined by regulations, in a port or near to a disembarkation point or in an airport. Foreign nationals are confined in transit zones for the time that is strictly necessary for their departure or for the processing of their application for entry into the territory as asylum-seekers.

French legislation contains a specific provision that allows foreign nationals to ask to have one clear day before enforcement of the entry refusal decision. This timeframe, which in no way alters the "non-entry" status, nevertheless requires the interested party to be placed in a transit zone.

Foreign nationals confined in transit zones shall be advised, as soon as reasonably possible, that they may request assistance from an interpreter and a doctor, communicate with an adviser or any person of their choice and leave the transit zone at any time for any destination outside France. They shall also be informed of the rights that they may exercise regarding applications for asylum. This information shall be provided to them in a language they understand.

Confinement in a transit zone may be decided on for a maximum of four days by means of a written and reasoned decision from a border control officer and may be extended by the judge with jurisdiction for a period of eight days, renewable once, in extraordinary circumstances.

As regards applications for asylum at the border, unless assessment of the asylum application is the responsibility of another Member State, the entry refusal decision shall only be taken following consultation with the decision-making authority for asylum matters, namely the French Office for the Protection of Refugees and Stateless Persons (OFPRA). The OFPRA submits its opinion within two business days in compliance with the stipulated procedural warranties. The OFPRA's reasoned decision covers the inadmissible or clearly unfounded nature of the asylum application. The clearly unfounded nature of the application is assessed in light of the applicant's statements when these are obviously irrelevant in terms of the conditions for granting asylum or when they are devoid of all credibility as regards the alleged risk of persecution or serious harm. The OFPRA takes account of the asylum-seeker's vulnerability. The lawyer or representative of one of the accredited associations, designated by the applicant, is authorised to accompany him/her to his/her interview with the OFPRA.

If the OFPRA's opinion is in favour of the interested party's entry into France as an asylum-seeker, it is binding on the Minister responsible for immigration, unless the foreign national's access to French territory represents a serious threat to public order.

Foreign nationals allowed to enter France as asylum-seekers are immediately provided with a temporary eight-day visa.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Confinement in a transit zone could imply deprivation of liberty within the meaning of Article 5 of the ECHR.

Nevertheless, as ruled by the European Court of Human Rights (Grand Chamber judgment in *Ilias and Ahmed v. Hungary* of 21/11/2019), the deprivation of liberty suffered by a foreign national confined in a transit zone must be differentiated from that suffered by a foreign national who is placed in detention for the purposes of enforcing a return procedure.

The Grand Chamber considered that the period in a transit zone may or may not be interpreted as deprivation of liberty on the basis of the following four criteria: (1) the applicants' individual situation and their choices, 2) the applicable legal regime of the respective country and its purpose, 3) the relevant duration, especially in the light of the purpose and the procedural protection enjoyed by applicants pending the events, and 4) the nature and degree of the actual restrictions imposed on or experienced by the applicants.

The Court deduced therefrom that confinement in a transit zone is different in nature to the deprivation of liberty suffered by foreign nationals placed in detention for enforcement of a return decision.

In its *Amuur* decision of June 25th, 1996 (n°19776/92) the European Court of Human Rights considered that the confinement in transit zones "is not in every respect comparable to that which obtains in centres for the detention of aliens pending deportation". The Court then specifies that "Such holding should not be prolonged excessively, otherwise there would be a risk of it turning a mere restriction on liberty - inevitable with a view to organising the practical details of the alien's repatriation or, where he has requested asylum, while his application for leave to enter the territory for that purpose is considered - into a deprivation of liberty. In that connection account should be taken of the fact that the measure is applicable not to those who have committed criminal offences but to aliens who, often fearing for their lives, have fled from their own country."

Confinement in a transit zone therefore represents a **limitation of liberty** within the meaning of Article 5 of the ECHR as the person subject to a refusal of entry or having applied for asylum may be confined in a transit zone for the time that is strictly necessary for his/her departure or for the processing of his/her asylum application. He/she shall nevertheless be advised of his/her right to leave the transit zone at any time for any destination outside France.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

Purpose of confinement in a transit zone and legal status of confined foreign nationals

The purpose of confinement in a transit zone is to keep foreign nationals who are not authorised to enter France at the border, on the basis of a refusal of entry, while their asylum application is assessed and/or their onward transportation is arranged.

This form of confinement thus fulfils the requirement of Article 14 of the SBC, which provides that “the border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned”. Moreover, Annex V Part A (2.b) of the SBC provides that pending onward transportation, appropriate measures must be taken, in compliance with national law, to prevent third-country nationals who have been refused entry from entering illegally.

Foreign nationals who are confined in a transit zone are deemed not to have entered French territory.

The main difficulty lies in the occasionally limited periods of time that are available, on the one hand, for identifying foreign nationals and, where necessary, organising onward transportation for them, and, on the other hand, for implementing legal proceedings and processing asylum applications at the border.

Administrative procedure and duration

Initial confinement results from an individual written and reasoned administrative decision that applies for an initial four-day period, and ultimately for no longer than is strictly necessary in order to implement the refusal of entry.

If the refusal of entry cannot be implemented within this time-limit, only a judicial judge, specifically the Magistrate for Custody and Release, in accordance with French constitutional requirements, can order the confinement of a foreign national in a transit zone to be extended.

The administrative authority can apply to this Magistrate for an eight-day extension to the confinement. On an exceptional basis, or when foreign nationals deliberately evade departure, the Magistrate may extend this period for an additional eight days.

This total duration of 20 days can be extended:

- by six days, if the foreign national applies for asylum during the last six days of a confinement extension, in which case the period is automatically renewed
- by four days, in the event of an appeal against a decision to refuse entry for asylum during the last four days

The total confinement in a transit zone can therefore last for 20, 24 or 26 days, depending on the circumstances.

Upon expiration of this period, if departure was not possible, and regardless of the foreign national's status (i.e., whether the next step is onward transportation or an asylum application), confinement in the transit zone ends. Foreign nationals are then released on the basis of a temporary eight-day visa to give them time to bring their situation into compliance. Once this visa expires, foreign nationals are deemed to be illegal residents, unless they are in possession of a temporary residence permit, a receipt for a residence permit application or an asylum claim certificate.

Rules on transit zones

□ Creation and delineation of transit zones:

Transit zones are created by the administrative authority on a permanent or temporary basis by a prefectural order.

These zones are delineated by the administrative authority (the *Préfet*) and extend from the embarkation and disembarkation points to the checkpoints for persons entering or leaving the country. They may include accommodation facilities within or in the vicinity of the disembarkation zone.

□ Third-party access to transit zones is guaranteed by law in the French Code of Entry and Residency for Foreign Nationals and the Right to Asylum (CESEDA), specifically for the following persons:

- the United Nations High Commissioner for Refugees or his/her representatives and humanitarian associations; rights of communication between confined foreign nationals and the representatives of these bodies are also protected by law
- French and European members of parliament, and any journalists who accompany them
- professional journalists, provided that their visit is authorised (authorisation is granted on a case-by-case basis)
- humanitarian associations, provided that they are accredited by the administrative authority, and provided that the representatives they appoint also obtain individual accreditation.

□ Conditions under which foreign nationals are confined

In all cases, the law requires there to be accommodation facilities that provide hotel-type services. If there is no such structure in the transit zone, the State provides suitably located accommodation for persons who are refused entry, which must in all cases ensure that “hotel-type services” are provided.

The standards defined by law ensure that, in practice, the conditions are no less favourable than for transit zone confinement, in accordance with Article 4 §4 of Directive 2008/115/EC.

Confined persons are entitled to free medical care that is provided by hospital doctors under agreements signed between the State and public hospitals. If necessary, confined persons are transferred to hospital in order to receive treatment, which has no impact on their legal status (*cf.* question 8).

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

Automatic measures are prohibited by French law, but only insofar as confinement in a transit zone is an individual measure that is necessary while awaiting departures that are not possible immediately or, where applicable, asylum application assessments at the border.

As stated previously, initial confinement results from an individual administrative decision, the legal basis of which is refusal of entry.

If the refusal of entry is not enforced within the maximum statutory time-limit of four days, confinement in the transit zone can be extended by order of the Magistrate for Custody and Release, in response to a relevant application by the administrative authority.

This order is handed down following a court hearing during which the rights of defence must obligatorily be respected, namely the right to be assisted by a lawyer, the provision of legal aid and the application of the adversarial principle. The procedural timeframes are very strictly regulated – the order is issued within 24 hours of the application being made – and the use of video conferences for hearings is left to the discretion of the magistrate, who may authorise this without the foreign national’s prior consent.

Orders handed down by the Magistrate for Custody and Release can be appealed against before the President of the Court of Appeal by the *Préfet* and the foreign national; appeals have no suspensive effect.

Only a Public Prosecutor, on an exceptional basis, has the possibility of petitioning the President of the Court of Appeal to confer suspensive effect on the appeal lodged by the Public Prosecutor's Office. The President of the Court of Appeal rules on this petition immediately and, if suspensive effect is conferred on the appeal, also rules on the substantive aspects of the case in an accelerated examination procedure (within 48 hours of the petition being filed). The foreign national is kept "at the disposal of the court" until this decision is handed down (in practice through confinement in the transit zone).

5. Which of the above-mentioned measures are most commonly used at your external borders?

Confinement in a transit zone is frequently used when direct onward transportation by the carrier is not possible for the persons concerned. For example, during the first six months of 2020, out of the 4,846 persons who were refused entry, 1,885 (39%) were confined in a transit zone.

In 2019, 12,776 persons were refused entry, 10,115 of whom (79%) were confined in a transit zone.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

France applies Article 2.2 a) of Directive 2008/115/EC, which enables Member States not to apply said Directive to third-country nationals who are refused entry under the Schengen Borders Code or who are apprehended or intercepted in connection with the irregular crossing of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay in that Member State.

This choice is an adequate response to the need for particularly expeditious handling associated with the procedures for refusing entry at external borders.

Consequently, French legislation is characterised by its systematic distinction between the rules on refusal of entry and those on the enforced return of foreign nationals who reside in France without a valid residence permit.

There are therefore no alternatives in the event that entry is refused at the border: the refusal must be enforced, and the individual concerned systematically and forcibly prevented from entering French territory (legally speaking) through confinement in a transit zone if onward transportation cannot be arranged immediately.

These characteristics, which are based on the deeming provision that third-country nationals who are kept at the border in transit zones do not enter French territory, are the primary guarantees of effective application of the rules contained in the Schengen Borders Code. To a large extent they limit the risks of absconding, while ensuring expedited procedures in full compliance with fundamental rights.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

As explained at the start of this questionnaire, France is not generally exposed to short-term peaks of illegal arrivals from outside of the Schengen Area. However, in the event of migratory pressure outside of BCPs, French domestic legislation contains specific provisions that make it possible to set up temporary mobile transit zones.

This mechanism is of course strictly regulated by the CESEDA (sub-paragraph 2 of Article L.221-2), which provides for the use of said zones in the specific event of the discovery, in a single location or in locations less than ten kilometres apart, of the apparent arrival at the border of a group of ten or more migrants, without the point of disembarkation having been clearly identified. In this case, the non-admission procedure applies: the foreign nationals are deemed not to have entered the country and are held “at the border” in a transit zone, under the ordinary law rules described above. This provisional transit zone (the duration of which is limited to 26 days) extends from the place where the migrants were discovered, to the nearest border crossing point.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4(1) of the proposed screening regulation at your external borders?

France regards the deprivation of liberty and compulsory confinement at the border as being necessary in order to ensure that persons do not enter French territory until screening is complete.

France also deems it relevant to highlight the following provision of domestic law (Article L.221-2 of the CESEDA), which allows for a certain amount of flexibility in practice in order to meet the medical needs of persons who cannot be treated directly in a transit zone:

“Without any need for a specific decision, the transit zone encompasses the places to which the foreign national must travel, either, in connection with the ongoing procedure, or, out of medical necessity”.

Therefore, while the deeming provision of non-entry is evidenced geographically by transit zones, it can also “accompany” foreign nationals when they are required to leave the transit zone, for example for medical reasons.

In order to give the screening mechanism its full effect, it would be necessary to stipulate that the identification which is provided for at this stage is not limited solely to collecting information, but also includes a preliminary investigation into the identity data provided by the interested party (age and nationality). This would make it possible to determine, at this stage, whether or not the interested party’s situation falls within the scope of a border procedure. In practice, this would mean posting officers who are trained in this type of preliminary investigation (who, for example, would be able to determine whether the interested party in fact appears to be a minor, as claimed, and a citizen of a country for which the protection level exceeds 20%). Accordingly, while the interested party would be oriented towards the asylum procedure at the border upon completion of screening, from a legal standpoint he/she would still be regarded as not having entered French territory, as required by the draft Common Procedure Regulation.

GERMANY

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

a. Air borders

- *Remaining in transit*

If refusal of entry cannot be enforced immediately and no application for detention pending exit from the federal territory is made, under section 15 (6) of the Residence Act the foreigner may be accommodated in the transit area of the airport. After a maximum of 30 days after the foreigner's arrival, a judicial order is required for such accommodation.

In the event that unaccompanied foreign minors are detained, the principle of proportionality is especially important. It must be possible to place them in age-appropriate accommodation in the best interests of the child. This measure becomes more intrusive the longer the accommodation in the transit area of the airport lasts; this eventually becomes tantamount to deprivation of liberty.

Under German law, detaining a foreigner in the transit area of an airport for up to 30 days is not regarded as a deprivation of liberty. However, after 30 days at the latest, a judicial order is required to detain a foreigner in the transit area of an airport, as from that time at the latest such accommodation may be regarded as deprivation of liberty. A foreigner who has filed an application for asylum may not be refused entry for as long as the foreigner is permitted to stay in the federal territory in accordance with the provisions of the Asylum Act. In the event of entry by air, a special procedure applies to certain asylum applications (section 18a of the Asylum Act).

- *Fiction of non-entry*

A foreigner is deemed to have entered the federal territory only after having crossed the border and passed through the border checkpoint. If the authorities charged with policing cross-border traffic allow a foreigner to pass through the border checkpoint for a specific temporary purpose prior to a decision on the refusal of entry (section 15 of the Residence Act, sections 18, 18a of the Asylum Act) or during preparation, safeguarding or implementation of this measure, this does not constitute entry as referred to above as long as the said authorities remain able to monitor the foreigner's stay. For this reason, if the border authorities allow a foreigner to pass through the border checkpoint prior to a decision on the refusal of entry or as part of the procedure for issuing a refusal of entry itself (e.g. examination by a physician, appearance before a local court), under German law this does not constitute entry, as long as the said authorities remain able to monitor the foreigner's stay (see section 13 (2) sentence 2 of the Residence Act). The fiction of non-entry applies as long as the authorities charged with policing cross-border traffic are able to monitor the foreigner's stay.

- *Taking into custody*

Under the Act on the Federal Police, persons who during a border check are referred to a second line check to verify their identity and thus their right to pass through the border checkpoint (enter) may, depending on the circumstances in the individual case and the measures to be carried out, be subject to temporary restriction of freedom of movement or deprivation of liberty (see sections 39 ff. of the Act on the Federal Police). Under section 40 of the Act on the Federal Police, a judicial decision is immediately required in the event of deprivation of liberty.

- *Detention pending exit from the federal territory*

According to the Residence Act, if a ruling to refuse entry has been issued and cannot be enforced immediately, the foreigner concerned is, as a general rule, to be taken into custody (detention pending exit from the federal territory) by virtue of a judicial order (see section 15 (5) of the Residence Act).

Detention pending exit from the federal territory is only applied as a last resort. It is subject to strict conditions which ensure that the principle of proportionality is upheld, in particular with regard to vulnerable groups of persons.

Detention of unaccompanied foreign minors is generally disproportionate because alternatives to their detention usually exist. Unaccompanied foreign minors may therefore be detained only in extreme cases and for the shortest possible time. In addition, they must be placed in facilities which are able to accommodate needs appropriate to their age. When detention is applied for, the foreigner is brought before the local court (measure involving deprivation of liberty) which has jurisdiction for such matters. If the foreigner cannot be brought before this court, an application for a provisional order for temporary deprivation of liberty is to be made.

b. Land borders

Not applicable, because Germany has no external land borders as defined in the Schengen Borders Code.

c. Sea borders

If refusal of entry cannot be enforced immediately, it is necessary to ensure its enforcement. For maritime vessels, the border authority refuses passengers or crew members permission to leave the ship and charges the master with ensuring their compliance. Based on a risk analysis, the border authority monitors compliance with the refusal of permission to leave the ship. The same applies to stowaways (see no. 3.1.4 of Annex VI of the Schengen Borders Code). The refusal of entry is then enforced by sea.

However, should there be reasons preventing the foreigner from being returned by ship, in particular because the foreigner's presence on board would endanger the safe operation of the ship or the health of the crew or of the stowaway (no. 4.3.9 of the Annex to the Convention of 9 April 1965 on Facilitation of International Maritime Traffic), the border authority orders the foreigner's return by air and makes sure that the fiction of non-entry is upheld on the way to the airport.

If refusal of entry cannot be enforced immediately, an application for detention to ensure refusal of entry is to be made.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Detention to ensure refusal of entry (*Einreiseverweigerungshaft*) and taking into custody (*Ingewahrsamnahme*). The foreigner's stay in the transit area of an airport also constitutes deprivation of liberty after 30 days at the latest and requires a judicial order.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

With regard to the legal limits, please see the answers to the previous questions.

In some cases, acquiring passport substitutes is a practical challenge. There is uncertainty in these situations due to the lack of a specific date for the return.

In addition, the fiction of non-entry requires additional resources (dedicated space, staff).

In the case of uncooperative persons, it may be impossible to enforce refusal of entry, because the aircraft captain decides whether a person may be removed from the country on his or her aircraft.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

Every refusal of entry is an individual decision based on administrative law. Every decision is governed by the principle of proportionality and seeks possible measures that infringe as little as possible on the rights of the person concerned.

Deprivation of liberty requires a judicial order and only takes effect after a period in which an appeal may be lodged has elapsed, unless immediate enforcement has been specifically ordered. Border authority officers may (provisionally) take a foreigner into custody without a prior judicial order if it is not possible to obtain a court decision in advance. In this case, the court decision must be obtained immediately after the fact.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Enforcing refusal of entry by keeping the persons concerned in the transit area of an airport.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

See answer to question 5.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Enforcing refusal of entry by keeping the persons concerned in the transit area of an airport or in accommodation at all airports seems the most suitable.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

Article 4 (1) should create the necessary conditions so that the entry of third-country nationals apprehended while illegally crossing the external border can be prevented temporarily until they have been screened.

However, it would be necessary to check which legal and practical changes would be needed with regard to accommodating and providing for the persons concerned while the screening process is being carried out. The needs of unaccompanied foreign minors and other vulnerable groups would have to receive special consideration. In particular, it would be necessary to ensure that unaccompanied foreign minors are allowed entry if necessary in the best interests of the child. This would be the case in particular if it would otherwise not be possible to provide appropriate accommodation and care to ensure the minor's well-being.

GREECE

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

a. Air Borders

In cases of Refusal of Entry, persons are staying either within the transit area or, if available, within specific rooms under police supervision. Those persons are not considered to be in police custody.

b. Land Borders

In cases of Refusal of Entry, persons immediately return to the country of origin, using their own vehicles.

c. Sea Borders

In case of Refusal of Entry, persons are staying either on the floating means or if available remain in specific rooms under police supervision. Those persons are not considered to be in police custody.

Apart from the above, a set of other measures are also implemented, such as penalties to carriers and enhancement of border surveillance, in order to prevent unauthorised entry.

It is prescribed in national legislation that air and sea carriers, who transfer passengers to Greece without valid, genuine and sufficient documentation (passport, visas etc.) are being imposed with fines, accordingly.

Furthermore, as regards border surveillance, the number of police officers deployed at the borders has been increased in the frame of the national operation "Aspida". A variety of assets is being used by the competent authorities for the integrated surveillance of the Green borders, which allow the early detection of illegal migrants.

More specifically, an Automated Surveillance System in the GRC-TUR land border is in place, which provides live image from the most vulnerable areas. In addition, the Hellenic Authorities are going to complete the extension of the electronic border surveillance system along the Greek-Turkish land border in order to enhance the existing capacities.

Moreover, the on-duty police patrols, as well as the military units, are equipped with relevant assets, such as thermal cameras, optical cameras and portable surveillance systems, in order to detect and prevent on time the illegal entry of third country-nationals into our territory.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

As regards third country nationals, who have been refused entry in the Schengen area, the measures taken do not involve deprivation of liberty within the meaning of Article 5 of ECHR.

As regards those persons who are under asylum or return procedures, the provisions of Directives 2011/95 and 2008/115, which have been transferred into national legislation, apply.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

According to Article 46(5) of Law 4636/2019 and Article 30(5) and 30(6) of Law 3907/2011 "Detention shall be maintained for as long a period as the conditions laid down in paragraph 1 are fulfilled and it is necessary to ensure successful removal. The maximum period of detention may not exceed six months.

The timeline of the above-mentioned paragraph may be extended for a limited period not exceeding twelve months, in case where, regardless of all reasonable efforts by the competent authorities, the removal operation is likely to last longer owing to: (a) a lack of cooperation by the third-country national concerned, or (b) delays in obtaining the necessary documentation from third countries."

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

For every third country national, an individual refusal of entry is issued by the Police Officer in charge.

For every illegal migrant, the Hellenic Police Authorities issue an individual decision of detention-return.

5. Which of the above-mentioned measures are most commonly used at your external borders?

The most commonly used measure is the continuous border surveillance by police patrols; for this reason, the Hellenic Police closely monitors the situation and increases accordingly both the capacity of police personnel and the available resources at the borders.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

All the measures are jointly contributing to combat the illegal migration phenomenon.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

A combination of all the above mentioned measures is the key for effectively combating the illegal migration phenomenon.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

HUNGARY

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

Based on the Hungarian legislation, according to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, the authority carrying out border checks shall refuse the entry of third-country nationals seeking admission for stays not exceeding three months according to the provisions of the Schengen Borders Code, and shall return such persons - in due observation of its interests:

- a) to the country of origin of the third-country national in question;
- b) to the country that is liable to accept the third-country national in question;
- c) to the country where the customary residence of the third-country national in question is located;
- d) to any third country prepared to accept the third-country national in question.

The decision for the refusal of entry may not be appealed.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Based on the Hungarian legislation, according to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, a third-country national whose entry was refused and is turned back shall:

- a) remain for a maximum period of eight hours on the means of transport that is scheduled to depart to the point of origin or another destination of transit;
- b) remain in a designated place located in the frontier zone for a maximum period of seventy-two hours, or if having arrived by means of air transport, in a designated place of the airport for a maximum period of eight days; or
- c) transfer onto another means of transport of the carrier that is liable to provide return transport.

If the return procedure cannot be carried out within the mentioned time limits, the third-country national shall be expelled. If expulsion is ordered for the mentioned reason the third-country national in question may not be excluded.

In case of a refusal of entry, a decision is issued at the border crossing point. In order to provide a sound administration, the person concerned is escorted by a police officer to the service area or to a special room designated for second line check of the border crossing point.

Both places are away from the location at which all persons are checked (first line) and under the control of the police. Following receipt of the decision, the passenger is escorted to the exit lane and has to leave the territory. The measure shall not constitute a detention, it is only a form of supervision undertaken by police officers.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

The introduction of such a measure should be restricted to the bare minimum time needed to response to the situation in compliance with national and international law. A large number of passengers arriving at the border crossing point could pose a problem because of the limited number of facilities and staff of a border crossing point.

Based on the Hungarian legislation, according to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, Based on the Hungarian legislation, according to the Act Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals, a third-country national whose entry was refused and is turned back shall:

- a) remain for a maximum period of eight hours on the means of transport that is scheduled to depart to the point of origin or another destination of transit;
- b) remain in a designated place located in the frontier zone for a maximum period of seventy-two hours, or if having arrived by means of air transport, in a designated place of the airport for a maximum period of eight days; or
- c) transfer onto another means of transport of the carrier that is liable to provide return transport.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

The measures shall be taken based on the Hungarian legislation, according to the Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals and the Government Decree 114/2007 (V. 24.) on the Implementation of Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals. In line with this in case of a refusal of entry, a decision is issued at the border crossing point.

5. Which of the above-mentioned measures are most commonly used at your external borders?

The most common measures are listed in answer to Questions 2. and 3., but according to the practise, remaining in a designated place located in the frontier zone for a maximum period of seventy-two hours, or if having arrived by means of air transport, in a designated place of the airport for a maximum period of eight days is the most commonly used measure at the Hungarian external borders.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

All measures and activities allowed and ensured by the Hungarian law are carried out at the external borders in line with the principles of necessity and proportionality, , however our experiences show that the most effective activity preventing misuse/absconding is the continuous and strict supervision carrier out by the Hungarian border guards (border policing officers).

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

The aforementioned measures are taken in the light of normal passengers, in case of an exceptional migratory pressure, according to our experiences and opinion, a special facility is needed at the border for migrants, in order to effectively deal with such kind of exceptional migratory pressure.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

We are convinced that the effective implementation of the obligations listed in Article 4 (1) of the proposed screening regulation, as well as ensuring the ability to prevent absconding from these measures can only be achieved by ensuring the possibility for ordering detention during the whole screening process. In this regard we must ensure an appropriate legal basis for ordering detention (align with Article 41a of the draft APR to be able to prevent entering the territory of the MS-s) for the full timeframe of the screening. Furthermore, the timeframes related to detention as well as the legal remedy or complaint should also be clarified.

LATVIA

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**

Article 14 paragraph 4 of Schengen Border Code determines “*The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned*”.

- a. Air Border**

A third-country national who has received a refusal of entry at the air border is accompanied to the non-Schengen terminal (which is a closed zone terminal) of the “Riga” International Airport and handed over to the responsible air carrier for returning back.

- b. Land Border**

At road Border Crossing Points (BCP) in cases of refusal of entry, person is returned to the country of departure. The neighbouring border surveillance units are informed on the fact of issuing of refusal of entry, as well as in separate cases officials of the border guard service of a neighbouring country are also informed. At the railway BCPs, in cases of refusal of entry, the responsible structural unit ensures transportation of a third country national to the country of departure by a returning train or through the nearest road BCP, in this case the border guard service of a neighbouring country is informed.

- c. Sea Border**

In case when a third-country national is entering, for example, on a cargo ship, and he/she is issued a refusal of entry at the border, the captain provides warranty letter to the officials of the State Border Guard that this crew member or passenger will not disembark the vessel. In case persons entering on a pleasure boat (yacht) are issued a refusal of entry, the yacht club (security) representatives are informed that passengers of a particular yacht are not allowed to disembark that yacht.

- 2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**

Officials of the State Border Guard have the right to detain a foreigner in the cases referred to in Section 51¹ of the Immigration Law, if the foreigner is hiding his or her identity, provides false information or otherwise refuses to cooperate in other ways, as well as if the foreigner has crossed the external border, avoiding border checks or has used a forged travel document, forged visa or residence permit.

In accordance with Section 60² of the Immigration Law - the officials of the State Border Guard have the right to detain a foreigner not longer than for 48 hours, in cases when taking the decision to refuse entry into the Republic of Latvia to a foreigner, it is impossible to immediately return him or her back to the country he or she has arrived from.

¹ Please see Section 51 of the Immigration Law attached in Annex I

² Please see Section 60 of the Immigration Law attached in Annex I

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

The challenges of performing the return during the period of 48 hours are detected at the airport, in particular, in cases, when there is a limited number of flights per week, for instance, 1 or 2 flights to specific destinations. Furthermore, the foreigner who after the end of the detention period (48 hours) has not been returned to the country of departure is staying at the non-Schengen terminal (which is a closed zone terminal) of the airport and is waiting for a carrier to transfer him to the country of departure.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

The detention of foreigners is based on Article 51 and 60 of the Immigration Law. When detaining a foreigner, an official of the State Border Guard shall draw up the detention report. The detention report shall indicate the date and place of drawing up thereof, the position, given name and surname of the person who has drawn up the report, information regarding the detainee, time and motives of detention.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Taking into account that currently offences related to the illegal crossing of the state border or the use of a forged travel document, forged visa or residence permit are the ones mostly detected at the external border, the foreigners are detained within the scope of Section 51 of the Immigration Law.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Currently, the detention of a foreigner within the scope of Section 60 of the Immigration Law.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Currently, the detention of a foreigner within the scope of Section 60 of the Immigration Law.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

As regards practical implementation of Article 4 (1) in particular and of the future Screening Regulation in general, it will require preparations at national level, including adaptation of processes, procedures and procedural deadlines and possibly also adaptation of systems and infrastructure. It is a subject to a proper future assessment of necessary ways of implementation of the Screening Regulation at national level. In view of this, Latvia considers that it is necessary to determine in Article 21 of the Screening Regulation a transition period for at least 12 months.

Annex I

Excerpt of Section 51 and Section 60 of the Immigration Law

Section 51. (1) An official of the State Border Guard has the right to detain a foreigner, except for a minor foreigner who has not reached the age of 14 years, if:

- 1) the removal procedure is applicable to him or her in accordance with Section 41, 46 or 50.6 of this Law;
- 2) he or she is subject to the return to a third country or to another Member State of the European Union in accordance with a treaty or agreement, which provides for the readmission of such persons who are staying illegally in the territory of the relevant country.

(2) An official of the State Border Guard has the right to take the decision to detain a foreigner if there are grounds to believe that he or she will avoid the removal procedure or will impede the preparation thereof, or there is a risk of absconding of the foreigner, and it is substantiated by any of the following circumstances:

- 1) the foreigner is hiding his or her identity, provides false information or refuses to co-operate in other ways;
 - 2) the foreigner has crossed the external border, avoiding border checks, as well as has used a forged travel document, forged visa or residence permit;
 - 3) the foreigner cannot indicate a place where he or she will stay until the end of the relevant removal procedure and submit a written certification of the apartment or house owner regarding determination to ensure the accommodation to the foreigner, or cannot present the sum of money that would be sufficient for booking a hotel until his or her removal;
 - 4) a competent State or foreign institution has provided information which provides grounds for considering that the foreigner threatens the State security, public order or safety;
 - 5) the foreigner is involved in promoting illegal immigration;
 - 6) the foreigner has been convicted of a criminal offence committed in the Republic of Latvia, for which the sentence intended is related to the deprivation of liberty for at least one year;
 - 7) the foreigner has previously avoided a removal procedure in the Republic of Latvia or in another Member State of the European Union;
 - 8) the foreigner has unjustifiably failed to execute the voluntary return decision;
 - 9) the foreigner has unjustifiably failed to fulfil the specified obligation to register with the relevant unit of the State Border Guard;
 - 10) the foreigner has previously arbitrarily left an accommodation centre for detained foreigners or detention premises;
 - 11) the foreigner has entered the Republic of Latvia by ignoring the decision to include in the list or decision on the prohibition to enter the Schengen Area.
- (3) An official of the State Border Guard, when deciding the case regarding detention of a foreigner, may, due to reasons of humanitarian nature, take the decision to apply one of the following alternative means of detention:
- 1) regular registration at the specified unit of the State Border Guard;
 - 2) the handing over of a travel document and other personal identification documents at the disposal of the foreigner to an official of the State Border Guard.

(4) The decision of an official of the State Border Guard to impose the obligation referred to in Paragraph three of this Section shall indicate the information regarding the foreigner, the obligation imposed on him or her and the conditions for its execution, and a photograph of the foreigner shall be attached thereto.

(5) An official of the State Border Guard shall detain a foreigner in order to:

1) execute his or her removal. If an additional punishment has been imposed on the foreigner by a court judgment - removal from the Republic of Latvia -, he or she may be detained after the court judgment has been pronounced, if in the particular case the security measure - imprisonment - has not been applied to the foreigner;

2) ensure the removal procedure, which is provided for in Section 46, Paragraph five of this Law.

Section 60. If an official of the State Border Guard, when taking the decision to refuse entry into the Republic of Latvia to a foreigner, is unable to immediately return him or her back to the country he or she has arrived from, the State Border Guard official has the right to detain such foreigner until it is possible to do this, but not longer than for 48 hours.

LITHUANIA

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**

Article 14 (4) of the Schengen Borders Code:

a. Air Borders

If the alien does not comply with the entry conditions provided for in Article 6 of the Schengen Borders Code, he/she shall not be granted entry to the Republic of Lithuania. The SBGS official shall take a decision to refuse entry and shall fill in a standard form provided for in Part B of Annex V to the Schengen Borders Code.

Usually the alien is returned back by the same flight, i. e. he/she waits for the flight in the airport transit area. Whenever there is necessary to wait a longer period of time before the next flight, the alien is brought to the premises of the SBGS frontier station which are located in the restricted access zone of the airport, i. e. the alien does not enter the territory of Lithuania. At the frontier station the alien waits for the next flight in a special room for persons who are refused entry which is equipped with all necessary facilities (furniture: sofa-bed, table, chair, closet; hygiene facilities: showers, sinks and toilets).

b. Land Borders

At the road BCsP, an alien who does not comply with the entry conditions set out in Article 6 of the Schengen Borders Code shall be refused entry to the Republic of Lithuania. The SBGS official shall take a decision to refuse entry and shall fill in a standard form provided for in Part B of Annex V to the Schengen Borders Code. After the alien is served with the decision, he/she immediately returns to the country from which he/she came. At railway BCPs the alien is returned to the country from which he came by the nearest train. Until the nearest train comes the alien is kept in the BCP premises in a special room for persons who are refused entry which is equipped with all necessary facilities (furniture: sofa-bed, table, chair, closet; hygiene facilities: showers, sinks and toilets).

c. Sea Borders

If the alien does not comply with the entry conditions provided for in Article 6 of the Schengen Borders Code, he/she shall not be granted entry to the Republic of Lithuania. The SBGS official shall take a decision to refuse entry and shall fill in a standard form provided for in Part B of Annex V to the Schengen Borders Code. The alien is returned to the ship by which he/she arrived and is handed over to the master of the ship. The ship departs with the alien on board and the alien is returned to the country from which he came.

Illegal border crossing:

Once an alien who has crossed the border illegally has been identified, the question of whether a pre-trial investigation into an illegal border crossing will be initiated (Article 291 of the Criminal Code) is resolved. If a pre-trial investigation is initiated, the proceedings are conducted in accordance with criminal proceedings.

If the pre-trial investigation is not initiated, the alien is detained in accordance with the Law of the Republic of Lithuania on the Legal Status of Aliens. An alien may be detained by the SBGS officials up to 48 hours; by a court decision, the alien may be detained for the period exceeding 48-hour time-frame at the SBGS Foreigners Registration Centre.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

The provision of Article 5(1)(f) ECHR " the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition" has been transposed to the Law on the Legal Status of Aliens, namely:

Article 113. Grounds for Detention of an Alien

1. An alien who is not a citizen of an EU Member State, his family member or another person who enjoys the right of free movement under legal acts of the European Union may be detained on the following grounds:

- 1) in order to prevent the alien from entering the Republic of Lithuania without a permit;
- 2) the alien has unlawfully entered the Republic of Lithuania or illegally stays in it;
- 3) when it is sought to return the alien who has been refused entry into the Republic of Lithuania to the country from which he arrived;
- 4) when the alien is suspected of using counterfeit documents;
- 5) when a decision is taken to expel the alien from the Republic of Lithuania or another state to which the Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third country nationals applies;
- 6) in order to prevent the spread of dangerous or especially dangerous contagious diseases;
- 7) when the alien's stay in the Republic of Lithuania poses a threat to national security, public order or human health.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

This provision is only enforced during detention, as Article 5 (1) ECHR states that "... no one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law".

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

The decision shall be taken individually. A law enforcement officer has the right to detain an alien for up to 48 hours, and a court decision shall be issued for a detention exceeding 48-hour period.

5. Which of the above-mentioned measures are most commonly used at your external borders?

The most common measure is detention of aliens for unlawful entry (detention carried out by law enforcement officers - up to 48 hours, for prolongation of the 48-hour detention term a court decision need to be issued) pursuant to Article 113 (1)(2) of the Law on the Legal Status of Aliens "1. An alien who is not a citizen of an EU Member State, his family member or another person who enjoys the right of free movement under legal acts of the European Union may be detained on the following grounds:

- 2) the alien has unlawfully entered the Republic of Lithuania or illegally stays in it."

- 6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?**

Detention of aliens for unlawful entry (see point 5)

- 7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?**

The most suitable measure is detention (by law enforcement officers for up to 48 hours, by a court decision for a period exceeding 48 hours)

- 8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?**

Whenever detention is not applied, the "refusal of entry" as described in the Screening Regulation -- a restriction on freedom of movement not linked to deprivation of liberty but preventing entry into the territory of the country/Schengen area -- needs to be more clearly defined.

LUXEMBOURG

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

SBC Art.14 (4): *The border guards shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned.*

Luxembourg has no border crossing point other than the one at the airport. Luxembourg legislation does not provide for imprisonment as a criminal law sanction in cases of mere irregular entry or stay.

In principle, entry into Member State territory is refused to third country nationals in all cases where entry and residence conditions have not been met in their entirety (article 5.1 of the SBC). Where applicable, said nationals are subject to second-line controls in a private location (article 7.5 of the SBC). Specifically, officers verify whether the person in question falls under one of the categories of persons referred to under article 5.4 of the SBC. This provision is without prejudice to the special provisions on the right to asylum and international protection.

If the third country national does not meet these conditions, entry into Luxembourg is refused pursuant to Article 99 of the law of 29 August 2008 on the free movement of persons and immigration. Any refusal of entry into national territory is subject to a substantiated decision taken by a member of the Airport Control Department (Article 104 of the law on the free movement of persons and immigration). Any decision to refuse entry during a border control performed in accordance with the provisions set out under Article 13 of the SBC is subject to a substantiated decision taken by a member of the Airport Control Department (article 104(2) of the law of 29 August 2008).

Notification and enforcement of the refusal are recorded in a report sent to the Directorate of Immigration (article 105(1) of the law of 29 August 2008). The competent border guard fills out the standard refusal of entry form included under Annex V part B of the SBC. The report is presented to the individual in question for signature. The border guard informs the traveler of the reason for the refusal of entry, if necessary an interpreter is called in. Reasons given for a refusal to sign are recorded. The passenger in question will be given the right to appeal against the refusal of entry.

The border guard places a struck-through stamp in the passport and, on the right-hand side, adds the letter(s) stating the reason for which entry has been refused. If the passport carries a valid Schengen visa, the border guard cancels the visa, should it be discovered that the conditions for its issue were not met at the time of issue, particularly in the event that there are substantial grounds to believe that the visa has been fraudulently obtained.

The border guard immediately informs the airline that the third country national has been refused entry. The airline is required to return the national to their country of origin or any other country to which they may be admitted (article 107(1) of the law of 29 August 2008). In addition, the airline is required to pay subsistence costs, including healthcare costs, for the person in question (article 107(3) of the law of 29 August 2008). The border guard prepares a report against the airline responsible for landing a third country national without a valid travel document and, where applicable, the necessary visa, on national territory. A copy of this report is provided to the airline (article 108(2) of the law of 29 August 2008).

Border guards then accompany the traveller back to the aircraft and hand him over to the airline personnel. In case it is not possible to return the passenger with the next flight, he will be held in the waiting area at Luxembourg International Airport awaiting the next available flight.

Detention in a waiting area within the airport

The third country national who has been refused entry is held in a waiting area within the airport (article 119(1) of the law of 29 August 2008). Holding of the foreign national in the waiting area is limited to the time that is strictly necessary for their departure. Holding time in the waiting area may not exceed 48 hours. Where the decision cannot be enforced within a 48-hour period, the foreign national is placed in detention in an enclosed structure. Placement in detention cannot be considered to be an authorisation of entry into national territory (article 119(2) of the law of 29 August 2008).

Each TCN is examined by a doctor prior to being held in the waiting area. In the event that the detainee's health deteriorates, the police officer on duty may summon a doctor to examine the person in detention. The doctor may then decide whether or not the person should be hospitalised for other appropriate medical treatment. In such a situation, the detainee is not considered to be entering into Luxembourg territory. Nevertheless, he/she will be accommodated in a secure room at the hospital, and will be monitored by a police officer to prevent escape.

Minors are not separated from their parents or close family members. An ad hoc guardian may be assigned by the government to unaccompanied minors in order to protect the rights and needs of the child, and to provide the care and attention that they need. The elderly, people with disabilities and pregnant women receive all the specific medical assistance that they require.

Detention in a closed centre

As part of preparations for the enforcement of a removal measure or a request for air transit, or where holding time in the waiting area at the airport exceeds 48 hours, the third country national may, on the decision of the Minister for Immigration and Asylum, be placed in detention in a closed centre. Detention takes place primarily when there is a risk of absconding or if the person in question avoids or prevents preparations for return or for the removal procedure.

Luxembourg's detention facility is situated at Luxembourg-Findel, close to the airport. Maximum theoretical capacity is 88 people. The facility is sub-divided into 4 units: 3 for single men (two units with 16 single bedrooms and one unit with 14 double bedrooms (it should be noted that in practice these rooms are for single occupancy only); 1 unit for single women and families (14 double bedrooms, some of which are interconnecting). Daily accommodation capacity is therefore 46 single men and 14 single women and/or up to 2x14 family members in practice. Families with children may only be held for a maximum of 7 days.

The centre provides everything that is required for the well-being of infants, and young children have access to outdoor play areas in their unit. Elderly people are placed under specific medical supervision; where necessary, a special diet is implemented.

In accordance with Article 120(1) of the law of 29 August 2008, an unaccompanied minor may be placed in detention in a facility that is appropriate and suited to his age-specific needs. The best interests of the child are always taken into account and the measure is used only as a measure of last resort. Unaccompanied minors are consequently placed in open reception facilities, such as Red Cross centers.

The amended law of 29 August 2008 on the free movement of persons and immigration provides for an initial detention period of one month, which may be renewed three times for a period of one month at each renewal. If, despite efforts made, it is likely that the removal operation will require a longer period of time due to a lack of cooperation of the third country national, or delays in obtaining the necessary documents from a third country, the detention period may be extended twice, for an additional month at each extension. In this scenario, the maximum length of detention is six months. If the Minister decides to extend the detention period for the fourth and fifth time, he has to lodge a request within five working days of notification of the decision to the president of the administrative tribunal. The administrative tribunal delivers an emergency ruling, within ten days after the lodging of the request. Otherwise, the person detained must be released at once. A person who has already been placed in detention on one or several prior occasion(s) may be re-detained if there is a prospect of removal, particularly if the person has been released from a previous detention because the time required for identification and the acquisition of travel documents exceeded the maximum detention period or where there are new elements relating to identification and repatriation.

There are no other facilities that can be used for the detention of irregular migrants in view of removal.

Exceptionally, and as an alternative to detention, irregular migrants are placed in view of removal in the temporary Emergency Shelter Structure (Structure d'hébergement d'urgence Kirchberg – SHUK), which is mainly used to accommodate male asylum seekers who fall under the Dublin regulation. The SHUK is however a semi-open structure.

Third country national apprehended on the territory

Police officers who detect a third country national on Luxembourg's national territory who has entered or remained without satisfying the legal conditions or who has remained beyond the authorised time limit, contact the competent authorities to decide on the appropriate action to be taken in accordance with national law. A report is prepared by the agents and delivered to the public prosecutor, and a report is addressed to the Directorate of Immigration.

From an immigration perspective, the situation of the person will be assessed. If it is proven that the person has illegally crossed the border, the police will liaise with the MAEE to get a decision based on the law of 29 August 2008. The MAEE may decide to bring the person to one of the available detention facilities. If the person applies for international protection, this procedure will be executed.

If there is a criminal offense, the Police has to liaise with the public prosecutor, who might decide based on the circumstances and gravity, to send the person to prison. Within 24 hours, the person will be interviewed by a judge, who then decides to free the person or to extend his preventive retention in the prison according to criminal procedure.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Art. 5 of the Convention: Right to liberty and security

Both measures (detention in a waiting area within the airport and in a closed centre) involve deprivation of liberty within the meaning of Art.5 ECHR.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

No specific legal challenges are associated with the aforementioned measures. The main practical challenge consists in assuring the availability of flights to transport the TNC back to the airport of origin. Similarly, the limited capacity of the detention centre poses a practical challenge.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

In case of a refusal of entry, the border guard informs the traveller of the reason for the refusal of entry, if necessary an interpreter is called in. A protocol "*Refus d'entrée*" will be drawn up, in case of lack of time this can also be done by hand. The traveller must then sign this document and will receive a copy. An entry stamp is affixed to the passport of the traveller. This stamp is crossed out with an "open cross". In the lower right corner of the stamp or cross, the letter indicating the reason for refusal of entry is affixed. The passenger in question will be given the right to appeal against the refusal of entry (Law of 29 August 2008 on the free movement of persons and immigration and Manual point 6.7). Border guards then accompany the traveller back to the aircraft and hand him over to the airline personnel. In case it is not possible to return the passenger with the next flight, he will be held in the waiting area at Luxembourg International Airport awaiting the next available flight.

As part of preparations for the enforcement of a removal measure or a request for air transit, or where holding time in the waiting area at the airport exceeds 48 hours, the third country national may, on the decision of the Minister for Immigration and Asylum, be placed in detention in a closed centre, unless less coercive measures can be effectively applied. Detention takes place primarily when there is a risk of absconding or if the person in question avoids or prevents preparations for return or for the removal procedure. The detention decision is notified to the third country national by a member of the Grand-Ducal Police, who has the capacity of a Criminal Police officer, in writing and against receipt in a language which the person may reasonably be presumed to understand. The notification is subject to a written report by the Criminal Police officer.

In order to defend their interests, the detainee has the right to be assisted free of charge by an interpreter, and to choose or be assigned a lawyer. An appeal may be lodged against the decision with the administrative tribunal within one month of notification (law of 2 December 2019 amending article 123 of the law of 29 August 2008 on the free movement of persons and immigration). The administrative tribunal delivers an emergency ruling, within ten days of the lodging of the appeal in all cases. The decisions of the administrative tribunal may be appealed before the administrative court. The appeal must be lodged within three days of notification of the tribunal's decision, under penalty of lapse of rights. The administrative court delivers an emergency ruling, within ten days of the lodging of the appeal in all cases.

If the Minister decides to extend the detention period for the fourth and fifth time, he has to lodge a request within five working days of notification of the decision to the president of the administrative tribunal. Otherwise, the person detained must be released at once. The administrative tribunal delivers an emergency ruling, within ten days after the lodging of the request. The judicial supervision in case of prolonged detention periods was introduced by law in 2019, following the relevant recommendation from the 2016 evaluation of Luxembourg on the application of the Schengen acquis in the field of return.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Both measures (detention in a waiting area within the airport and in a closed centre) are commonly used. However, it must be noted that the number of people held in the waiting area is usually very limited (1-2 persons per year). So far, there has not been a case where a TCN, after spending 48 hours in the waiting area, had to be transferred to the enclosed detention structure. Usually, TCN can be transported back to the airport of origin within a relatively short amount of time.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Both measures (detention in a waiting area within the airport and in a closed centre) prevent misuse / absconding effectively.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Due to the geographical situation of Luxembourg (only one external border at Luxembourg International Airport), exceptional migratory pressure will most likely not originate from the external border. If so, the scope of a crisis is estimated to be very limited due to the capacity, frequency and availability of airplanes. Nevertheless, migratory pressure could suddenly arise due to secondary movements. High influx of asylum seekers originating from safe countries of origin and a high number of Dublin cases were the reasons behind establishing the ultra-accelerated procedure and the use of the SHUK for male asylum seekers falling under the Dublin regulation. The second measure mentioned above (detention in a closed centre) would be suitable for preventing entry, even in the event of an exceptional migratory pressure.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

In order to implement the obligation contained in Article 4(1) of the screening proposal, we would need more information as to how the screening process and the border procedure interlink. Moreover, we would need to know whether the screening also applies to TCNs who are already on the territory of the member states due to secondary movements and who consequently apply for international protection with the asylum authorities on the territory of a member state (i.e. *without being apprehended during a police check*). Currently, the large majority of asylum requests are made on our territory. It is not clear to us whether this category of migrants will need to be screened, and if they will be subject to a border procedure following the screening.

In addition, a number of question concerning the interpretation of the legal fiction of non-entry remain, both in the context of the screening and in the context of the border procedure. Who bears the responsibility for health care, education and social benefits for the duration of the screening given the legal fiction of non-entry? Would vulnerable persons be exempt from the obligation to undergo the screening? How can a refusal of entry (and the legal fiction of non-entry) legally coexist with a return decision?

Given the questions presented above, it is at this stage difficult to say which legal and practical steps will be necessary in order to implement the contained in Article 4(1) of the screening proposal. We would certainly need to enhance our operational capacities in terms of infrastructures and human resources, especially if the procedures also apply to TCNs who are already on the territory of the member states due to secondary movements and who consequently apply for international protection with the asylum authorities on the territory of a member state.

MALTA

General Comment

Malta is providing replies to the questions below in light of obligations arising from Article 14 of the Schengen Borders Code. Third country nationals requesting asylum who are disembarked on the territory of Malta following Search and Rescue (SAR) operations are considered to have fulfilled conditions of entry by virtue of the fact that they are allowed entry through the disembarkation itself.

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

a) Air Borders

In case of arrivals via the air border crossing point, third country nationals who do not satisfy the entry conditions are requested to leave/returned on the first available flight immediately following their arrival. Should the first immediately available flight be within a few days, the third country nationals are informed by border guards that they need to be subjected to temporary detention in line with applicable national and EU legislation.

b) Land Borders

Malta has no land borders and therefore this is not applicable.

c) Sea Borders

Third country nationals on board vessels arriving from extra-Schengen borders who do not satisfy entry conditions are refused entry and requested to remain on board the vessel or are subjected to detention.

Irregular third country nationals disembarked following SAR operations are not regarded as inadmissible and therefore refused entry as per Article 14 of the Schengen Borders Code (SBC). These persons are admitted within the territory of Malta as persons falling under Article 6(5) of the SBC as in practice they were rescued at sea, allowed to disembark in Malta and are subject to *non-refoulement* as they immediately request asylum.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

In the cases of third country nationals who fall under Article 14 (1) of the SBC, these are temporary detained as required by Article 10 of the Immigration Act (Chapter 217 of the laws of Malta) in order to fulfil the requirements of Article 14(4) of the SBC.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

The legal limits, as explained above, are set in accordance with the Immigration Act. In practice, challenges posed by the third country nationals who do not fulfil entry conditions (but are not SAR cases) relate to their attempts at circumventing departure. Challenges faced by national authorities include lack of space at the detention facilities and lack of resources (for example Police officers are stationed on the vessel for detention purposes of third country nationals who request to remain on board their vessel following non-fulfilment of entry conditions).

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

The measures take effect automatically by national law. Third country nationals who do not fulfil entry conditions are notified with the refusal of entry as per Article 14(2) of the SBC.

5. Which of the above-mentioned measures are most commonly used at your external borders?

The measures provided under the reply to question 1 are all commonly resorted to. No other measures are resorted to.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Malta uses temporary detention as the only measure at the air and sea borders to prevent third country nationals who are refused entry as per Article 14 of the SBC from *absconding*.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Apart from immediate return whenever possible, temporary detention is considered the most effective measure to prevent entry or absconding while undergoing pre-entry screening.

Malta's challenges arise when SAR cases are concerned, as the application of detention is more restricted in these cases. Once rescued migrants request asylum, which is the case for the overwhelming majority, migration detention is only possible in specific circumstances as per Articles 8 – 11 of the Reception Conditions Directive.

Moreover, in view of the principle of non-refoulement, no action to return those persons may be taken until the asylum application has been exhausted, i.e. on appeal. Therefore, immediate return is, in these cases, de facto impossible to achieve. The matter is further complicated by the fact that practically all boat arrivals are undocumented, which means that return must be preceded by the identification of the persons concerned on the part of the authority of the presumed country of origin. While processes may be expedited by more efficient asylum systems and increased cooperation on the part of third countries, delays in effecting these returns will remain inevitable.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4(1) of the proposed screening regulation at your external borders?

Legislation and infrastructure for third country nationals, who are refused entry at the air/sea border crossing points, as per Article 14 SBC, are already in place. However, Malta has concerns with the legal fiction and timeframes proposed in the new pact; which are considered applicable for SAR cases. Article 4 of the proposed Screening Regulation will not prevent irregular migration especially for Member States with maritime borders. The situation faced in practice is of undocumented third country nationals who risk their lives to reach European territory, who have to be saved at sea and are taken to shore with the permission of the Member State as the derogation in Article 6(5) of the SBC applies. In this context, the pre-screening proposal is just a legal fiction that will, in reality result in a situation of persons penned up at the external borders of the EU.

NETHERLANDS

At put forward before, the border procedure can in concert with other measures, be part of an effective migration system in the EU. We welcome initiatives to share information on practices in the member states.

We do invite to take note of our answers to the questionnaire send out by the Asylum WP

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**
 - a. Air Borders**
 - b. Land Borders**
 - c. Sea Borders**

The Netherlands has both air and sea borders but no land Schengen border crossing points. Border crossings at the sea-border other than via ports that are designated border crossing points is negligible at present. There is however a significant amount of attempts to pass the border crossing point illegally.

Due to geographic limitations, the prevention of unauthorised entry can as a rule only be safe guarded by restrictive measures. If a return flight will depart shortly (e.g. same or next day, a measure may be applied restricting the freedom of movement to the airside of the airport (under article 6(1) of the Alien Act), if necessary to ascertain compliance. This is however not an arrangement suitably for low term stay, in those cases a detention measure will be applied (under article 6(2) of the alien act.)

As mentioned in questionnaire already send in, for asylum cases where the border procedure is applied: In order to prevent the entry to the Schengen Area during the examination of the asylum application, the border procedure in the NL is accompanied by a detention order.

After applying for asylum at the border the border police will start the process of registration, intake and lodging of the application. The border guard issues a detention measure, which is individually motivated and takes into account the personal situation and statement of the applicant. When detention proves to be disproportionately onerous due to special individual circumstances, the applicant will be transferred to an open location for the asylum procedure.

When the border procedure is applied, the applicant will be transferred to a central detention center close to Schiphol airport. During the border procedure, applicants are being held in detention in accordance with Article 8, 3 sub c Reception Directive. The Immigration Office has its own detention facilities and offices, separated from the detention facilities for criminal inmates.

Note: National law also provides for restriction of freedom after a refusal of entry to the Schengen area (in case a TCN does not apply for asylum). The freedom of movement is restricted to the airport lounge, and only applied when a swift return is guaranteed. As one can imagine, this situation is not suitable to process asylum applications. However, the NL can imagine practical/geographical situations where a border procedure and the assessment of the asylum application is handled in reception facilities where measures restricting the freedom ensure that entry in violation of the Schengen Borders Code is prevented.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

Detention during the border procedure falls within the scope of article 5 ECHR. Restriction of movement in the airside of the international airport is not classified as detention, given the practical application (limited duration, availability to leave).

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

Currently there are no specific legal or practical limits associated with the procedure as described above. The time limit of four weeks allows the determining authority to assess the application, and when additional information or investigation is needed to decide on the application, the assessment can be continued in an open facility.

The detention order and the decision on the asylum application are subject to appeal. The detention order is an individually motivated and written decision. To ensure a legal review of the detention order, national law provides that in case the applicant does not lodge an appeal within 28 days, the State shall notify a court (the notification will be considered an appeal).

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

All measures applied take effect only after a formal administrative decision, in writing, to which legal remedies can be brought to bear. Also, when detained, applicant will receive written information on the applicable rules in the facility and additional information.

5. Which of the above-mentioned measures are most commonly used at your external borders?

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

As mentioned above, there is either a restriction of movement (to the airside of the airport) or detention. These are effective in our national context, while allowing for placement in open facilities for humanitarian reasons where the risk of absconding is low (e.g. families with minors in the Dutch asylum procedure).

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

We have - fortunately - not been in a position where exceptional migratory pressure applies to our external borders. Pressure on the chain of organizations is continuously high, but the influx is predominantly the result of secondary movements arriving across the internal borders. As put forward above, in our setting, detention is at the end of the day the only effective way to avoid unlawful entry of the Schengen area. While current capacity is well suited for the expected influx, and exceptional migratory pressure at our external border is for now a theoretical question, we would legally be able to rapidly allocate further detention capacity if deemed necessary.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

We will in all likelihood adjust our legislation in order to formally allow for a screening procedure. Screening does effectively already take place, but is at present included in the time reserved for the asylum border procedure, or the return procedure at the border. However a definitive decision on the best way to implement this will still have to be made, and where possible without infringing on the 'effet utile' of the regulation, we would implement the new procedure by using pre-existing legislative tools.

POLAND

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border: a. Air Borders b. Land Borders c. Sea Borders

In order to secure the stay of a TCN being a subject to a decision on refusal of entry until he or she leaves the territory of Poland an administrative decision (as indicated below) can be issued:

- a decision to stay in an indicated place until leaving the territory of Poland (can be issued at all types of borders, however they are issued only if the TCN is obliged to wait for taking him/her back by the carrier)
- a decision prohibiting disembarkation (sea border)
- a decision to leave the territory of Poland on board of the same aircraft on which he/she arrived (or another) (air border).

However, in case when the TCN can leave the territory of Poland within a couple of hours (especially at the land border), he or she only waits in a rooms for administrative activities without any additional order while the decision on refusal of entry is issued.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

As a rule, TCNs who have been refused entry are not deprived of their liberty in the meaning of placing them in a detention centre. However, their stay is secured until they leave the territory of Poland (in administrative rooms in Border Guard posts, or at the airport rooms, or at the ship).

Persons who have been apprehended after crossing the external borders illegally, can be subject to detention in order to prepare readmission documentation if it is the case or to identify the person, if there is risk of absconding.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

Identified challenges:

In terms of air borders when there is a necessity to wait for the next flight for a couple of days (especially if the carrier does not cooperate and refuses to take the person back), the TCN is placed in waiting rooms at the airports (on the basis of an administrative decision mentioned above in point 1). The conditions in these rooms do not meet standards regarding detention so legislative changes are now being elaborated in that matter.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

Each TCN receives an individual decision.

5. Which of the above-mentioned measures are most commonly used at your external borders?

A decision to stay in an indicated place until leaving the territory of Poland, if any. But the most frequent cases are proceeded without any administrative decision since a TCN waits a couple of hours until the decision on refusal of entry is issued and then he / she is turned back (at the land border). His/her stay in a separated room for the time of administrative proceeding is secured.

In case of apprehended migrants after having crossed the border illegally they are placed in a short period detention.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

As in point 5.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

In the event if exceptional migratory pressure the only one option can be effective – to place migrants in a short-period detention.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

The scope of the potential necessary changes to the national regulations require further analysis although at this point we do not identify barriers that would render the obligation in Article 4 (1) impossible to implement.

In order to enable the implementation of the obligation in Article 4 (1) of the proposed screening regulation it is necessary to have the possibility to place the TCN concerned in a (short period) detention centre where his / her rights as a detainee will be guaranteed (especially if the detention can last up to 5 days). The screening without placing the TCN in detention seems not to be effective due to high risk of absconding.

PORTUGAL

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**

- a. Air Borders**

When the conditions for entry into the Schengen area are not met, according to national legislation and the Schengen Borders Code, entry is refused and citizens are taken to a temporary reception centre until they return to the country of origin. These centres are located in the international area of external air border.

If an attempt is made at the airport to enter irregularly outside the border post, the Public Security Police (PSP), which is responsible for airport security, presents the citizen to the Immigration and Borders Service (SEF), for control and verification procedures. entry requirements, regardless of the administrative or penal measures adopted.

- b. Land Borders**

Applicable, as PT has no external land borders within the scope of Schengen.

- c. Sea Borders**

Detected third-country nationals on board vessels, without entry conditions, usually they remain on board, under responsibility of the person in charge of the ship. The vessels are monitored to prevent escapes.

Between authorized crossing points, and if an illegal entry attempt is detected, the national entity that detects the incident takes the citizen to the nearest border post, where they will assess the fulfilment of entry requirements. A hotspot is currently being created in the Algarve area (Port of Vila Real de Santo António, near the border with Spain) for screening procedures and supporting basic health care.

In the absence of legal entry requirements, detention is carried out for the purposes of removal, and the citizens are present to the competent judge for the purpose of applying the coercion measure provided for by law , which usually consists of determining the installation in a temporary detention centre.

- 2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**

Both cases can be framed in a situation similar to al. f) of article 5 of the ECHR, as we have a restriction of freedom, even though we are within the scope of the strictly necessary measures and for the time necessary for the citizen to return to its origin

- 3. What specific legal limits or practical challenges are associated with the aforementioned measures?**

In all situations, the citizen is informed, as soon as possible and in a language he/she understands, about the reasons for refusal of entry or detention and is entitled to be assisted by a lawyer after the refusal of entry or detention.

According to national laws, if it is foreseeable that the citizen will remain in spaces equivalent to temporary detention centres located in airports for a period longer than 48 hours, this stay will have to be informed and validated by the judicial authority, and cannot exceed 60 days.

Sometimes ships are not able to guarantee the surveillance of illegal immigrants, and when there is no attempt to escape the ship or illegal entry, there is no legal framework for detention or installation in an detention centre.

The maximum period of stay in an Installation Centre in Portugal is, in all situations, limited to 60 days.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

All measures are legally foreseen, taking the form of individual decisions that apply to each specific case. All interested parties are duly notified, and may present an appeal against them.

5. Which of the above-mentioned measures are most commonly used at your external borders?

Refusal of entry under the Schengen Borders Code and installation at the Temporary detention Centre.

Detention for use of false or forged travel document or illegal stay in national territory (detected at the exit at the external border), and presentation to the Judge to determine the coercion measure.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / most effectively?

Refusals of entry at air and sea border crossing points.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Until now, Portugal has not been particularly affected by situations of exceptional migratory pressure outside authorized crossing points.

Staying in temporary detention centres or similar space is effective in the short term, but as the result after 60 days is entry into the territory, it ends up losing the desired preventive effect.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

Creation of temporary installation centres and screening centres at/near border crossing points.

Clarification of the legal situation of migrants during the screening procedure and how the period of time foreseen for screening “fits”, as it may conflict with the legally established rules for retaining people for reasons of identification / determining entry and conditions of stay (6 h or 48 h maximum without intervention by the judicial authority).

Articulation with health authorities that must guarantee permanent availability in the screening centres.

ROMANIA

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

The legal regime of the refusal of entry of the third-country nationals who do not enjoy the right of free movement under EU law is provided by art. 14 of the SBC and art. 8 and 9 of GEO no. 194/2002 on the regime of aliens in Romania.

In accordance with the provisions of the aforementioned normative acts, if, following the checks carried out at the road, rail, sea or air border crossing points, it is ascertained that it is necessary to refuse the entry of the third-country national on the territory, the border guard shall take the decision along with the necessary steps³.

The following rules shall apply further on:

Asylum-free cases

The TCN against whom the refusal of entry has been taken may voluntarily leave the border crossing point within maximum 24 hours (calculated starting with the hour following the one in which the refusal of entry was decided upon). Failing to do so, the border guards shall take the appropriate measures to send the person concerned to the country of origin or to another destination that he/she accepts and where he/she is accepted, except for the Romanian territory.

If more than 12 hours are necessary to arrange the departure from the border crossing point, the TCN may be accommodated in a designated location in the transit area or, if not possible, in another location established outside the border crossing point, having the regime of the transit area (meaning that entering the country is not authorised).

If the TCN declares in front of the border guard that leaving the BCP is possible only to a country where there are justified fears that his/her life is in danger or that he/she will be subjected to torture, inhuman or degrading treatment, and that he/she will not to submit an application for international protection, he/she is accommodated in the location arranged for this purpose in the transit area or, if not possible, in another location having the regime of the transit area, until the General Inspectorate for Immigration establishes, within a maximum of 10 days, whether the said declaration is substantiated. The examination shall take account of the individual's history, if he/she has previously applied for asylum (account shall be taken of the decision issued to that effect, which includes an individual analysis of the situation in the country of origin or other country where he might go, in terms of the risk of being subjected to ill treatment, torture, etc.). In the course of the analysis, public information on the situation in the countries concerned is consulted, if those countries are part of the list of safe countries, if human rights violations occur frequently, etc.

³ Consisting in the delivery of a standard refusal of entry form, set out in Annex V Part B of the SBC, which includes both the reason for the measure and the legal remedies for appeal, the application in the travel document of an entry stamp, crossed twice, in the shape of a cross, in black ink, which is not erased and the inscription on the right side of the letter corresponding to the reason

Also, information is requested about other countries where the alien could go safely, as well as any other details which may help to establish a safe destination for the person concerned. 2 situations may arise:

- If the General Inspectorate for Immigration establishes that the TCN's **statement is unfounded**, then he/she shall be informed by the border guard accordingly, and may voluntarily leave the state border crossing point within a maximum of 24 hours (calculated starting with the hour following the one in which he was informed), after the expiry of the deadline the border guard taking the appropriate measures to send the TCN to the country of origin or to another destination he/she accepts and where he/she is accepted, except for the territory of the Romanian state.
- If the TCN's **statement is substantiated**, but does not request asylum, the General Inspectorate for Immigration shall decide not to authorise entry and shall remove him/her under escort to the transit country (forced or voluntary return) or to another third country where he/she wishes to go and where can be accepted with the documents in his/her possession. During the pre-return and return phase, on individual assessment, the TCN can be placed in public custody or can be granted with toleration to remain on the RO territory as alternative measure to public custody. If the person refuses these options or there are other practical obstacles (e.g. related to readmission procedures), the possibilities to be returned are suspended and the TCN will be authorised to enter the territory, having the statute of tolerate.

Also, in case the refused entry TCN is transported to the air, sea or land border by a carrier, without proper (including false or counterfeited) travel documents and/or necessary visa or hidden in means of transportation, the carrier will have to assume responsibility for the TCN without delay (including accommodation, meals and return costs) and transport the TCN to the country which issued the travel document authorising him/her to cross the border or to any other third country where he/she is guaranteed to be admitted, or to have that person immediately sent to another country by another carrier.

Until the departure, appropriate measures will be taken at the border crossing point to prevent the illegal entry of that person refused entry (for example: he/she will wait in the airport transit area /will not have the right to go ashore / will not be allowed to leave the BCP (road/railway). The TCN will be accommodated in the locations specially designed for this purpose, provided by the BCP administrator.

In case the TCN is identified in the vicinity of the border⁴ having illegally and directly entered from the territory of neighboring third countries (Serbia, Ukraine and Moldova) or after having transited through the territory of the neighboring third countries (holding a travel document in which an entry stamp / visa is applied or a residence permit issued by the state from whose territory they entered - prima facie evidence) and **does not apply for asylum**, the border guards will immediately take the necessary steps, according to the Readmission Agreements, in order to return the TCN to the border authorities of the relevant neighboring third country. In this situation, the TCN is taken to the border crossing point with a view to carry out the handover.

⁴ an area extending up to 30 Kilometers from the common land border between Romania and neighboring third countries according to the provisions of readmission agreements concluded between the European Community and Serbia, Ukraine, Moldova.

Asylum related cases in BCPs

In line with art. 14 paragraph (4) of the Schengen Borders Code and art. 87 para. (1) of Law no. 122/2006 regarding Asylum in Romania, third-country national presenting for border checks in the road, rail, sea or air border crossing points, not fulfilling the entry conditions and seeking international protection from Romania, will remain in the transit area of the border crossing point or may be accommodated in special reception and accommodation centers located in the proximity of the BCPs having the regime of the transit area, for a maximum period of 20 days. This period includes the necessary timeframe for legal procedures in case of appeal against the decision to reject the asylum application. If an irrevocable decision is not taken to the asylum application within the aforementioned deadline, the TCN is allowed to enter the country.

Asylum related cases outside BCPs

When a TCN is detected in an illegal situation in the vicinity of the border or in the area of competence of the Border Police⁵, he/she is taken to the competent Border Police unit (border police sector) where the criminal case-related proceedings shall start (for illegal crossing the border, which is a crime according to Romanian Criminal Code). The TCN will be kept at the premises of the Border Police unit during the procedures for up to 24 hours. During the investigation (up to 24 hours), the goal is to establish the circumstances in which the crime of illegal border crossing was committed and a criminal file is drawn up. Usually, the person is investigated without being kept in arrest, reason for which he/she is handed over to the territorial structures of the General Inspectorate for Immigration as person in illegal situation.

In this case, the General Inspectorate for Immigration will perform verifications during a 24 hours deadline and will take measures with a view to issue the return decision. After the return decision is issued, there are 3 possibilities: return within 24 hours deadline, if possible, public custody until the return decision is put into practice or granting tolerate statute.

If during the criminal investigations, the **TCN applies for international protection from Romania**, his/her application is immediately handed over to the territorial structure of the General Inspectorate for Immigration to decide upon granting access to territory. In this case, the TCN shall be informed he/she has to go to the territorial unit of the General Inspectorate of Immigration.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

According to the European Court of Justice, in determining the situations in which the deprivation of liberty may be considered within the meaning of Article 5 ECHR, a series of criteria have to be taken into account, such as the type of measure, duration, effects and modalities of implementing it. The EHCR case law established that the difference between deprivation of liberty and restriction of liberty pertains to the degree or intensity and not to the nature or substance (*Amuur v. France*, 25 June 1996, Reports of Judgments and Decisions 1996-III, § 42).

⁵ The area of competence is defined as the section from the border line inland for 30 km. Also, the Border Police has national competence (on the entire territory of Romania) only for fulfilling its attributions regarding the prevention and combating of illegal migration.

Taking into account:

- the national rules limiting the duration of stay in the transit area so that it does not exceed the necessary timeframe for examining the asylum application,
- in the situation of persons staying in an airport transit zone for a period of up to 3 days (until their asylum application is rejected, if case may be), the European Court established that there was not a deprivation of liberty in the sense of Article 5 of ECHR (Mahdid and Haddar case v. Austria (dec.), no. 74762/01, ECHR 2005-XIII,

RO considers that the situation of TCNs waiting in the transit zone of a BCP until their asylum application is decided upon is a temporary limitation.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

The specific legal limitations refer to:

- the period of maximum 20 days during which the person apply for asylum in the BCP remains in the transit area;
- the period of 24 hours required to carry out necessary criminal investigations.

The practical challenges relate to the abuse of the asylum procedure. TCNs who are detected illegally in the area of competence of the RBP, both on entry and on exit, apply for international protection, given that this procedure (asylum procedure) generates two possibilities:

- the suspension, during the assessment of the asylum application, of the investigations related to the illegal border crossing.
- being handed over to the General Inspectorate for Immigration where the persons are placed in open centers dedicated to asylum seekers for accommodation and procedures with open regime and give them the possibility to try to illegally exit Romania.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

Refusals of entry, asylum applications, criminal proceedings drawn up in the case of illegal border crossing, as well as decisions to grant access to the territory are individual and take effect under the relevant legislation.

5. Which of the above-mentioned measures are most commonly used at your external borders?

The most commonly used measure to prevent access to the territory is to keep the persons in the transit area of a BCP or, if not possible, in another location established outside the border crossing point, having the regime of the transit area.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Not granting access to the territory by keeping persons in the transit area of a BCP or in another location established outside the border crossing point, having the regime of the transit area, is effective only during the foreseen period (maximum 20 days) and only for certain categories of persons, respectively third-country nationals who do not meet the entry conditions and apply for asylum in a BCP.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

There is specific national legislation (GEO no. 53/2015) applicable in the event of imminent massive influx of migrants at the external borders of Romania, according to which integrated centers may be set up, having the regime of the transit area, designed for border check-related activities, epidemiological checks and clarification of the situation of the TCNs entering or attempting to enter in a large number and in a very short period of time the Romanian territory.

Within the integrated centers, the border guards perform border checks and together with representatives of the General Inspectorate for Immigration, activities for clarifying the legal status of the TCNs are performed. After that, they are handed over to General Inspectorate for Immigration personnel in order to take the necessary measures.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

The preliminary assessment carried out for the implementation of art. 4 (1) of the Screening Proposal, showed that adaptations of national legislation are needed (a long-term process) regulating:

- The status of the TCN subject of screening;
- The status of the screening centers, as well as their functioning (integrated or independent, depending on the national authorities that will have the competence to carry out the activities);
- Introduction in the legislation of the deadlines in which the screening will be carried out.

The specific measures envisaged by the Screening proposal require clearer, unambiguous provisions, whereas the term "shall not be authorized to enter" states that the persons concerned should not enter the territory, without mentioning specifically what measures should be taken in this regard.

As the legislative form of the proposed legislative act under analysis is a regulation, leaving a lot of issues that might be dealt with in the implementation phase to the discretion of the Member States cannot reach the objective to have direct and uniform implementation. Therefore, RO considers that the regulation should cover the incumbent aspects to the largest extent.

At the same time, other important necessary steps concern:

- Establishing the external border segments where the screening centers will be set up;
- Identifying all financing sources necessary for the establishment of these centers, for deploying the personnel of other national authorities (child protection, national rapporteur on trafficking in human beings, medical staff, interpreters), with a particular focus on groups in most vulnerable situations (women and girls, minorities, LGBTI, etc.);
- Establishing concrete ways of working with the other national authorities whose representatives will have to be present in the screening centers on different levels of activity;
- Rethinking the national monitoring mechanism for the respect of fundamental rights by adapting it to the new activities that will take place at the border.

SLOVAKIA

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**

a. Air Borders

There are no special national provisions in this regard.

In accordance with Schengen Borders Code the carrier takes responsibility for the third-country national who is subject of entry refusal decision at the border (after issuing decision). If the third-country national needs to wait for transport, special premises in transit area are available, to ensure as much comfort as possible to those who were refused to enter.

The person is not subject of deprivation of liberty.

b. Land Borders

There are no special national provisions regarding preventing the entry within the meaning of Article 14 (4) of the Schengen Borders Code.

After issuing decision, the person is immediately leaving border crossing points.

The person is not subject of deprivation of liberty.

c. Sea Borders

Not applicable.

- 2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**

Not applicable.

- 3. What specific legal limits or practical challenges are associated with the aforementioned measures?**

There are none.

- 4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?**

Not applicable.

- 5. Which of the above-mentioned measures are most commonly used at your external borders?**

Not applicable.

- 6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?**

Not applicable.

- 7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?**

Not applicable.

- 8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained.**

There are no additional legal or practical steps needed.

SLOVENIA

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

- a. Air Borders**
- b. Land Borders**
- c. Sea Borders**

The only common denominator is keeping the persons, whom do not meet conditions of entry under Article 6 of Schengen borders code, under constant police supervision until they are refused to the neighbouring police or handed over to the carrier. All refusals of entry are also inserted into the national data base.

a) Air Borders: A person is informed at the border check booth that he/she do not meet the conditions of entry under Article 6 of Schengen Border Code. The person is given a written decision on a standard form for refusal of entry at the booth; the refusal is marked in the person's passport (when the refused individual is in a possession of a passport). Then the person is issued a detention form and notified of his/hers rights and placed in a fully equipped room for refused individuals (within international space of the Airport). Police takes care that the person is given food rations (according to individual needs) and when needed other supplies. The responsible carrier is informed, they arrange for a return flight. In cases, when a return flight is not available within 48 hours, the person is released from the refused individual's room and placed in the international part of the Airport, under police supervision, where they wait for their flight (waiting time of a few hours). When the special room for refused individuals became available and usable, we had no cases of abscondence.

b) Land Borders: A refused person is informed that he/she don't meet the conditions of entry under Article 6 of Schengen Border Code. The person is given a written decision on a standard form for refusal of entry at the border; the refusal is marked in the person's passport (when the refused individual is in a possession of a passport). Person's passport and/or other documents are returned to the passenger when he/she presents itself at the designated exit lane. In case of an abscond, the nearby patrols are sent after the person and we do not have any records of successful absconding. Neighbouring authorities (Croatian police) are notified of the refusal. In cases when the refused person does not cooperate, he/she is escorted by Slovenian Police to the Croatian police.

c) Sea Borders: According to paragraph 3 of Article 26 of State border control law, the master of a vessel must take all necessary measures to ensure that passengers who do not have valid document for crossing the state border or have been refused entry to the Republic of Slovenia do not leave the vessel. Pleasure boats: In cases when a person using a pleasure boat is refused entry, he/she must leave the country immediately. The vessels departure is followed with technical means (cameras, radar) and (when necessary) by police patrol boats. Cargo and passenger ships: A crewmember or a passenger that was refused entry into Slovenia is handed over to the Capitan of the ship. It is their duty to make sure such a person does not leave the ship. In cases of multiple persons refused entry the port security services can put cameras on the possible exits from the vessel in question and notify the Police of any suspicious activity around the ship. Police officers make unannounced checks on the ship to verify that the refused persons are still on the vessel. Regular shipping lines:

When a passenger was refused entry, the carrier should find a suitable return method (another vessel, or when the weather conditions don't allow it or there isn't a return vessel in suitable time a taxi or bus). When the returned person is refused by another ship his/her departure is monitored by technical means or by patrol boats. When the returned person is refused by taxi or bus, a police patrol car escort the vehicle to the border.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

The procedure at the airports and railways, due to infrequent flights or trains.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

The time limit for detention in our legislation is maximum 48 hours. When dealing with other issues, like criminal act, this time limit can be insufficient to process the person, insure that all their rights are met and that he/she is taken to a court.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

An individual written decision is issued to third country national in every case.

5. Which of the above-mentioned measures are most commonly used at your external borders?

All of them.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Constant police supervision and the use of special facility (a room) for the waiting period at the Airport.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

None of them. When dealing with larger numbers of persons, the shortage of staff and insufficient space at the BCP's are a serious gap.

Individual's human rights need to be met and upheld regardless of staff shortage and facility inadequacy.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

The proposed regulation needs to differentiate between:

- external EU borders and external Schengen borders which are internal EU borders at the same time (Slovenia is doing everything mentioned above on the external Schengen border that is internal EU border).

The same procedure is done (in Slovenia) at the external Schengen border that is also internal EU border, for that sole reason the new regulation needs to define specific procedures and grant the same time frame for status of persons in screening process. Time frame for deprivation of liberty must arise from regulation itself and not be left to the MS national legislation.

SPAIN

1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:

Measures referred to here are based on controls carried out at border crossing points, since Article 14 of the Schengen Borders Code provides for refusal of entry of those third-country nationals who do not fulfil all the entry conditions laid down in Article 6(1), in connection with Article 5. In our view, controls at border crossing points are the only situations where prevention of entry is possible, by means of refusal of entry.

At the border crossing points, National Police carry out border checks, in accordance with Articles 6 and 8 of the Schengen Borders Code, reflected also in national legislation (Article 25 of Organic Law 4/2000, which specifies the requirements for entry into Spanish territory, as well as Royal Decree 557/2011). It will not be applicable to foreigners who apply for asylum at the time of their entry into Spain, where asylum legislation will apply.

Therefore, measures carried out are the following:

Airports, ports and land BCPs: Third country nationals who present themselves at border crossing points without fulfilling the conditions for entry will be subject to the procedure for refusal of entry in Article 60 of the Organic Law 4/2000. Within the framework of the procedure, they are offered legal assistance and interpretation. They are informed of the decision to refuse entry. The carrier is responsible for the return of the person who has been refused entry, that should be executed in a maximum of 72 hours (if not, detention would need to be requested from the judge). This administrative procedure will be suspended if the third-country national applies for asylum, being then applicable Law 12/2009, of 30 October, which regulates the right to asylum and subsidiary protection.

Between BCPs, at the blue/green border, apart from the operational border surveillance activities, it must be highlighted the importance of the cooperation and coordination with third country authorities, by enhancing SAR activities performed by them within their SAR waters or overlapping ones, trying to avoid loss of lives at the sea and, at the same time, preventing actively possible illegal entries. Additionally, it must be highlighted that no administrative procedure is initiated during the stay of the migrants at the vessels with Spanish flag, as they are staying under the consideration of 'persons in distress at sea'.

2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.

- 72 hours cautionary detention by the police, prior to the request of detention, according to art. 60.1 of Organic Law 4/2000.
- Detention of up to 60 days requested by the National Police and decided by the competent judge, with the purpose of materializing return operations according to art. 60.1 Organic Law 4/2000. When the carrier is not able to fulfil the obligation to return the third-country national to the point of departure within those 72h, the competent judge can order detention of this person for the time necessary to return the individual up to a maximum of 60 days. In regular circumstances, this last scenario hardly happens.

3. What specific legal limits or practical challenges are associated with the aforementioned measures?

Legal limits:

Article 17 of the Spanish Constitution establishes a maximum duration of 72 hours in cases of cautionary detention. Accordingly, article 60.1 LO 4/2000 provides for a time limit of 72 hours in cases of refusal of entry. Beyond this time limit, any detention decision shall be adopted by the judiciary, following the same criteria as for returns.

Practical challenges:

Asylum applications suspend any ongoing process whatever the stage it is on.

Migratory pressure situations imply a large number of third country national at BCPs, where facilities have a limited capacity. Completing the entry refusal procedures as well as eventual border asylum procedures becomes highly challenging.

4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?

Based on the Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration and the Royal Decree 557/2011, once the information has been provided, an individual reasoned entry-refusal decision is issued. This reasoned resolution may be challenged through the established channels.

Judicial decisions authorizing detention, when needed, are also individual and duly motivated.

5. Which of the above-mentioned measures are most commonly used at your external borders?

72 hours cautionary detention for the refusal of entry to be carried out.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

Deprivation of liberty where prompt enforcement of the return is ensured by the action of the carrier.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Entry can only be prevented at BCPs. Unauthorized border crossing between BCPs are not preventable this way.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

It should be stressed that the obligation contained in Article 4(1) cannot be applied to those who do not request to enter through an authorised border crossing point, considering the fact that in those cases the entry into the territory of the EU has already taken place.

Following the above considerations, the main objective of the screening proposal should be to ensure identification and registration in an efficient and timely manner. This would imply simplifying the requirement and obligations set in the regulation for the screening. In doing so, the obligation contained in Article 4(1) does not bring added value to the main objective of the proposal, i.e. facilitating a proper identification of third-country nationals and allowing for them being referred efficiently to the relevant procedures.

Cooperation with third countries is also essential in order to prevent entries. Joint operational support and cooperation should be reinforced so as to complement efforts by countries of origin and transit. In addition, other measures should include strengthening the use of Intelligent Borders and the use of API and PNR for pre-arrival passenger screening.

SWEDEN

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**

- a. Air Borders**

At BCPs: In those cases where a decision of refusal of entry according to the SBC has been taken and there is no legal basis for a decision of detention, the person will have to remain at the airport, waiting for a return flight. The persons are waiting at airside for the return. Depending of the size and/or other logistical circumstances at the airport, the border authorities must ensure that there is staff available to prevent the person who is to be returned, from entering the territory.

If the person applies for asylum, then he/she is referred to the Swedish Migration Agency.

- b. Land Borders**

Not applicable for Sweden

- c. Sea Borders**

In those cases where a decision of refusal of entry according to the SBC has been taken and there is no legal basis for detention, the person will have to wait until he/ she can be returned. Depending of the circumstances, the border authorities must ensure that there is staff available to prevent the person who is to be returned, from entering the territory.

Persons detected by the Swedish Coast Guard are normally referred to the Police Authority. The Police assess the case and take further actions such as e.g. a decision of refusal of entry (Schengen Borders Code)

- 2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**

A decision of detention in accordance with the Swedish Aliens Act or arrest.

- 3. What specific legal limits or practical challenges are associated with the aforementioned measures?**

Problems can arise when there is no legal ground for detention. Another challenge is when the provisions linked to a criminal case (arrest) collide with what is stipulated in the Schengen Borders Code.

Practical aspects and challenges are the lack of appropriate premises and lack of staff at BCPs who can be tasked to prevent the persons from entering the country.

- 4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?**

Such decisions are always taken on an individual basis.

5. Which of the above-mentioned measures are most commonly used at your external borders?

The most common procedure is that the person who has been refused entry has to wait at the BCP until the actual return can take place. However, this course of action is sometimes linked with practical problems related to sleeping areas and providing meals for the person to be returned.

6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?

The most effective measure would most probably be to detain the persons / keep them under surveillance; however, without legal grounds for detention, the latter measure is not possible.

7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?

Previous experiences from 2015 when Sweden had a large influx of migrants showed that the majority of the migrants arrived using the Öresund Connection from Denmark. From a Swedish perspective, preparedness with appropriate measures on the territory for such situations rather than at the external border would probably be the most effective way to tackle the situation.

8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?

Sweden can foresee challenges at a national level regarding the legal aspects in relation to fulfilling the obligation set out in art 4 (1). At a national level it also has to be examined how/whether the new obligations may affect the tasks of the different authorities and the possible need for changes regarding “who does what”.

There are also several issues that have to be examined regarding suitable premises that can be used for screening where the migrants are prevented from entering the territory. In this context we also see logistical challenges that have to be looked into.

ICELAND

- 1. How do your authorities currently prevent entry within the meaning of Article 14 (4) of the Schengen Borders Code? Please list (if applicable) the measures to be taken to prevent entry based on the following border types and differentiate with regard to land and sea borders between the border crossing point and the green / blue border:**

- a. Air Borders**

In Keflavik airport – we have the non-Schengen area and two waiting rooms we can use while working on cases that regard preventing entry.

- b. Land Borders**

NA

- c. Sea Borders**

For the Reykjavik Metropolitan police there are no proper measures and no facilities for waiting rooms.

For the Eastern district there are waiting rooms for short term waiting due to arrivals and departures of MS Norröna ferry.

- 2. Please clarify which of these measures involve deprivation of liberty within the meaning of Article 5 ECHR.**

1. B and F

- 3. What specific legal limits or practical challenges are associated with the aforementioned measures?**

Practical challenges are for example if a person is in a waiting room and needs to go to the bathroom or wants to have something to eat.

If a person is in the non-Schengen area at Keflavik airport he/she has access to toilets and can buy food.

No specific legal limits.

- 4. Do these measures take effect automatically (by law) or are individual decisions issued to the third-country nationals?**

It is mostly automatically, but is taken into consideration case by case.

- 5. Which of the above-mentioned measures are most commonly used at your external borders?**

The waiting rooms.

- 6. Which of the above-mentioned measures have the greatest effect at your external borders or prevent misuse / absconding most effectively?**

The waiting rooms.

- 7. In your experience, which of the aforementioned measures are suitable for preventing entry even in the event of an exceptional migratory pressure (short-term peak or total number)?**

The non-Schengen area in Keflavik airport.

- 8. What additional legal and practical steps do you consider necessary in order to be able to implement the obligation contained in Article 4 (1) of the proposed screening regulation at your external borders?**

It would be necessary to look into these measures as a whole, it has been a hot topic to have better accommodation when you have people waiting at the border, not to mention now with Covid-19 and irregular flights. With the screening proposal, it would increase the pressure to fix and decide on the internal structure for both waiting areas and centralized screening center and how we see it as future measures.
