

WRITTEN COMMENTS SUBMITTED BY THE MEMBER STATES

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

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BELGIUM

As stated during the meeting, we maintain our scrutiny reservation on all the articles.

In addition:

Article 1

We maintain our scrutiny reservation on the deletion of the SAR category.

Article 2

Since the wording has changed in art.1 and art.3, the definition of art.2§1 of “*unauthorized crossing of the external border*” is no longer needed.

Article 3

We suggest some fine-tuning to the text to make it clearer and easier to read. Our proposition goes as follows: “ *This Regulation shall apply to all third-country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State **except. This Regulation shall not apply to** third country nationals who are turned back or who are kept in custody, confinement or detention during the entirety of a period not exceeding 72 hours between apprehension and removal **or the end of the custody, confinement or detention** and for whom the Member State is not required to take the biometric data pursuant to Article 14 (1) and (3) of Regulation (EU) 603/2013 for reasons other than their age*”.

Regarding article3§2, it is still unclear to us if the screening will apply in the following case: if a person present himself/herself at the BCPs without meeting the entry conditions and without applying for international protection but cannot be removed easily and the custody has to end because there is no longer sufficient legal ground to prolong it; will this person be allowed to enter the territory without being subjected to the screening?

Article 3a

In art.3a§2, we would like to add directly in the text the possibility for MS to choose not to apply the return directive in the cases foreseen in art.2§2 a) of this directive. We suggest adding: “*Without prejudice to the application of provisions on international protection, Return Directive 2008/115/EC shall apply only after the screening has ended, **without prejudice to the exceptions foreseen in art.2.2a) of this directive and** except for the screening referred to in Article 5*”.

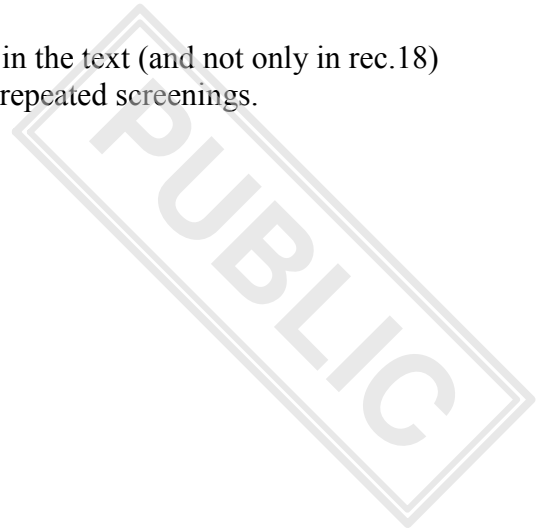
For the sake of clarity, since §1 refers only to the cases referred to in art.3§1, we suggest adding a §3, saying that for TCN referred to in art.3§2, the asylum acquis applies directly.

Article 4

The Commission said during the meeting that unaccompanied minors who make an application for international protection should be authorized to enter the territory following art.41§5 APR (category exempted from the asylum border procedure). We should thus add: “*During the screening, the persons referred to in art.3 §1 and 2 shall not be authored to enter the territory of a MS, **without prejudice of the application of Article 41.5 of the Asylum Procedures Regulation***”.

Article 5

As previously stated, we would like a clear provision in the text (and not only in rec.18) explaining that the same TCN cannot be subjected to repeated screenings.



BULGARIA

Bulgaria maintains scrutiny reservation on the whole Proposal and reservation on the substance on articles 4, 6 and 14 of the Regulation.

Article 1 Subject matter and scope

We support the comment made by Spain during the WP Frontiers meeting on 21 January on the new wording in the second paragraph. The wording “about to enter the territory of the Member States” does not correctly reflect the act of irregular crossing. We suggest the following revision:

“The purpose of the screening shall be the strengthening of the control of persons who ~~are about to enter the territory~~ have irregularly crossed the borders of the Member States Schengen area and their referral to the appropriate procedures.”

On the last paragraph, we suggest aligning the text with the text in article 5:

“The screening shall also be carried out within the territory of the Member States where there is no indication that third-country nationals have ~~been subject to controls at~~ crossed an external borders to enter the territory of the Member States in an authorised manner.”

Article 3 Screening at the external borders

Bulgaria places scrutiny reservation on the new wording.

We do not understand the rationale behind the new text of para 1.

Article 3a New Relations with other legal instruments

Bulgaria places reservation on the substance on this new article, as it mixes the rules for reception and processing of persons seeking international protection with the rules for border control and control of persons who have crossed the border irregularly.

With regards to the reference to article 26 (3) of the Asylum Procedures Regulation, it is unclear which text to use when analyzing the compromise proposal. Currently in the consolidated version of the proposal circulated at the end of September 2020, there is a new text in paragraph 3, which contains a reference to paragraphs 1 and 2 of the same article who have been deleted.

We took note of the explanation by the Commission during the WP Frontiers meeting on 21 January that asylum provisions will not apply to those TCNs who are not seeking international protection. In this regard, the reference to article 3(1) in paragraph 1 should be revised.

“1. For third-country nationals subject to the screening referred to in Article 3(24),...”

Article 4 Authorisation to enter the territory of the Member State

We maintain our reservation on the substance on this article.

Bulgaria is currently fulfilling the obligation under Art. 4 (1), as we do not allow entry into Bulgaria of persons who have been denied entry (ie are not physically admitted to the territory) and of persons detained due to illegal crossing of the border (ie albeit physically to be on the territory of the country their stay is not legal). The ground for this practice is the national legislation, more specifically the obligation for guaranteeing the execution of return decision which we issue immediately after the apprehension of the person.

The text in paragraph 2 is problematic for Bulgaria, as we see it as a pull factor. Paragraph 2 makes it possible to validate an illegal border crossing in breach of the established rules. In this way, the TCN will have the understanding that once he or she enters European territory, although illegally, he or she will be able to remain in the EU. The wording of paragraph 2 creates preconditions for individuals to apply for protection, as this will guarantee them the right to remain in the territory accommodated in open centres. Bulgaria views things differently. Once the TCNs have crossed the border illegally, they do not meet the entry conditions provided for in the Schengen Borders Code. That act cannot be validated retroactively. If the TCN submits an application for international protection, he or she is given the right to remain on the territory of the country during the procedure, but this is different from meeting the entry requirements within the meaning of Art. 6 of the Schengen Borders Code.

In this sense, we see the new compromise text of the Presidency in paragraph 1 as a possible solution for withdrawing Bulgaria's reservation on this text, **but only on condition that paragraph 2 is deleted**. At the end of the day the main purpose of the screening is to keep TCN in closed centres in order to prevent secondary movements. If this purpose is achieved according to the national law of the MSs there is no need for imposing the legal fiction under paragraph 2 of the Article.

“Article 4

Authorisation to enter the territory of a Member State

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

Member States shall lay down in their national law provisions to ensure that those persons remain at the disposal of the competent authorities for the duration of the screening.

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

~~*The screening shall also be discontinued when the third country national leaves voluntarily the territory of the Member States.”*~~

Article 5 Screening within the territory

We place a positive scrutiny reservation on the new wording.

We can agree with the new wording if the Bulgarian proposal under Article 4 is accepted in order to provide for flexibility for the MSs to apply their national practices. Thus those MSs who are in favour of keeping the legal fiction will have the opportunity to apply it, and those MSs, like Bulgaria, who are against the legal fiction will have the opportunity to apply alternative solutions. This is a win-win situation.

Article 6 Screening requirements

We place a scrutiny reservation on the compromise text.

On the new wording of paragraph 1 - in our opinion, the rule should provide for the possibility for MSs to use their available capacity and not to build new facilities near the border, which is an extremely politically sensitive issue. The new wording proposed by the Presidency (“Where a member state cannot”) still suggests the need for MSs to build facilities along or near the border and only in case of mass influx for example to be able to use other facilities within their territory. Article 6 is one of the provisions that imposes an exceptional burden on frontline countries, which are generally overwhelmed.

We heard the explanations of the Commission but we don’t share the same understanding. The nature of the border procedures in APR is still unclear and there are still MSs who have problems with the location. For the new procedures to work, they must make it as easy as possible for frontline MSs. Otherwise, these MS will be additionally burdened, and their situation will deteriorate further. We agree that it is justified to keep the person as close as possible to the border but if there is a chance for returning the person back to the neighboring third country. This is not the case in our EU relations with Turkey and that is why we don’t see any added value and necessity to keep the persons at the border. Setting-up closed centres at the external borders is not acceptable because this will turn our border zone in refugee camp.

Next, it is still not clear what should be the regime in these facilities. MS are required to ensure that the person does not abscond or attempt to do secondary movement to another MS. It is left to the discretion of the MS whether to detain, which immediately raises several issues related to the status of the person, the right to appeal, the right to legal defense, rights and obligations in general, which cannot arise if the legal fiction is applied. MS will have to detain anyone who crosses the border to carry out screening and that violates fundamental rights, especially in the case of a person seeking international protection. If a person seeks protection, his/her detention is allowed only in special cases and is subject to strict rules aimed at respecting fundamental human rights. If all these issues linked to the detention are left on the discretion of the MSs and their national legislation it is fair also the decision for the location to remain prerogative of the MSs.

We would like once again to stress our position that MS should be able to use their existing infrastructure and decide for themselves where to keep the TCNs.

Therefore, we propose the following amendment to paragraph 1:

“In the cases referred to in Article 3, the screening shall be conducted at any appropriate locations designated by the Member States.” ~~locations situated at or in proximity to the external borders. Where a Member State cannot accommodate third country nationals in those locations, it can resort to the use of other locations within its territory.~~

Although the Presidency does not have compromise proposals on all paragraphs, we still have issues such as:

- why is the period referred to in paragraph 5 shorter than that provided for cases under article 3? In this case, is the legal fiction applied again, and if so, how can we detain the person if he or she is not considered to be in the territory?
- Noting the explanation on the anti-trafficking rapporteurs (subparagraph 2 of paragraph 7) during the last meeting, we are still not sure of the added value of their involvement. We would like to receive more information on their role and functions under the Anti-trafficking Directive.

On the third paragraph, we suggest the following amendment:

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

We heard the explanations of the Commission but we do not share the same understanding. The nature of the border procedures in APR is still unclear and there are still MSs who have problems with the location. For the new procedures to work, they must make it as easy as possible for frontline MSs. Otherwise, these MS will be additionally burdened, and their situation will deteriorate further. We agree that it is justified to keep the person as close as possible to the border but if there is a chance for returning the person back to the neighboring third country. This is not the case in our EU relations with Turkey and that is why we do not see any added value and necessity to keep the persons at the border. Setting-up closed centres at the external borders is not acceptable because this will turn our border zone in refugee camp.

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CROATIA

Article 1, paragraph 1

We believe that the wording referring to obligated screening of third-country nationals disembarked after a search and rescue operation should be reintroduced in the text. More precisely, the part of the text that reads “*as well as those disembarked after a search and rescue operation*” should be reintroduced.

Article 3, paragraph 1

As in Article 1, paragraph 1, HR believes that the earlier wording relating to screening of third-country nationals disembarked after a search and rescue operation should be reintroduced. More precisely, the text reading “*are disembarked in the territory of a Member State following a search and rescue operation*” should be reintroduced in paragraph b).

Article 3a - New

We propose that other legal instruments be applied separately to those third-country nationals who have applied for international protection and those who have not applied for international protection and who are subject only to return procedures.

Article 4

Consistency should be kept throughout the entire text of the Regulation regarding the stay in the territory of Member States, in which case it would not be possible to leave the territory of a Member State if the entry into that State was not even authorised beforehand, during the screening procedure. At the same time, the Regulation needs to contain a provision which would ensure that third-country nationals who are subject to screening remain at the disposal for the duration of the screening, which is carried out before those persons are allowed entry into their territories.

Article 6, paragraph 1

We propose that the following wording be added: “Staying in locations designated for screening shall not be considered entry into the territory of the Member State, and thus leaving the said location shall not be allowed, and every departure shall be considered to be illegal crossing of the external border.”

Article 6, paragraph 7

We believe that a detailed study should be carried out in order to determine the future expenses of the EU, as well as of each particular Member State, with regard to the application of the Screening Regulation. Those expenses are not clear at the moment, and in their reply during the discussion of the Working Party, the Commission referred to document 11224/20, which considers the impact on the EU budget. However, this document provides only an estimate (EUR 417,626 million) without any detailed itemised explanation. It also states that no additional financial or human resources have been requested in relation to this legislative proposal, whereas the accompanying financial report stated that a financial support **may** be necessary for the following:

- screening infrastructure: construction and use/extension of the existing facilities on border crossing points, reception centres, etc.;
- training of border police officers and other relevant screening authorities;
- access to the relevant databases on new locations;
- training and recruitment of new screening staff;
- recruitment of medical staff;
- medical equipment and premises for preliminary medical examinations;
- establishment of an independent monitoring mechanism in order to ensure that fundamental rights are respected during screening.

Given that the planned amounts for each of the aforementioned items are not clear in the estimated financial impact, Croatia believes that not all segments have been covered (e.g. employees for securing screening locations, purchase of land for the construction of necessary infrastructure along the border crossing points, costs of interpreters, costs of transporting third-country nationals to other locations where screening might be carried out, etc.) and that the estimate of indicative costs of each Member State has also not been provided (not all Member States have the same number of border crossing points on their external borders nor are they all equal in terms of migratory pressure). We therefore propose that a detailed study be carried out in order to estimate the financial costs more precisely, but also the impact of this Regulation on the needs related to human resources and infrastructure.

CZECHIA

Article 1

In the first paragraph we propose replacing “irregular” by “unauthorised” to make a clear link with the definition 1 in Article 2 (*unauthorised crossing of the external border*):

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

Article 2 - Definition 8 (Europol data)

The proposal refers to the ETIAS Regulation (2018/1240). However, the wording of the definition corresponds to the definition that is used in Article 4 of Regulation (EU) 2019/817 (Interoperability regulation in the field of borders and visa). To our understanding, the ETIAS regulation as such (Regulation 2018/1240) contains a different definition which has not been amended by the Interoperability Regulation. Amendment of this definition is not included in the ETIAS consequential amendments, either. Does the Presidency or the Commission intend to submit such a proposal within the trialogue negotiations? Or if it is not necessary, could you please explain this issue?

General comment regarding Article 2

– except for definition 2 (threat to public health), all definitions repeat the wording of the definitions that are already provided in other legal acts and at the same time refer to the mentioned legal acts. We think that the reference to the other legal acts would be sufficient (see definition of the threat to public health) and that repeating of the wording of the definitions is not necessary.

Article 3/2 – “transit zones”

The Schengen Borders Code (in Part 2.1.3 of Annex VI) uses a term “transit area” which only covers international airports. While the Visa Code (in Articles 3 and 26) explicitly provides for “international transit area of airport”.

It remains unclear what the term transit zone within the screening proposal mean. Does it also cover other types of borders or just international airports? International seaports? How about land borders? We are of the opinion that adding a specific definition in Article 2 in this regard should be considered following the consensus on the meaning of this term.

Article 4

We welcome the efforts to reach a compromise with regard to this provision. Nevertheless, we believe that the second sentence of para 1 should better reflect the pursued objective mentioned in the first sentence. Therefore, we propose a new wording:

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

Member States shall lay down in their national law provisions to ensure that ~~during the screening the~~ those persons referred to in Article 3, paragraphs 1 and are not authorised to enter the territory of a Member State and remain therefore at the full disposal of the competent authorities for the duration of the screening.

....

Furthermore, to better reflect the content of paragraph 2, we propose revising the title of article 4 as follows:

“Authorisation to enter the territory of a Member State **and discontinuation of the screening**”

Article 6/6 (a) – „pre-entry screening form“

As the form shall be in accordance with Article 13 filled in also at the end of the screening that is carried out within the territory, we propose deleting „pre-entry“ and call the form just a „screening form“.

DENMARK

Article 2(1)

In the compromise proposal, the wording ‘unauthorised crossing of the external border’ seems to have been replaced by the wording ‘the irregular crossing by land, sea or air of the external border’, which should be reflected in Article 2(1).

Article 4(2)

In case the screening is discontinued, it should be regulated what the Member State should do with the form, and whether it should be deleted.

Article 6(3)

Are Member States obliged to document that deadlines for the screening process are kept?

Article 6(6)

Are Member States obliged to document the data collected during the screening? If yes, for how long must MS store the information/data? Are there circumstances in which the information/registration must be deleted?

FINLAND

Article 1

We fully realize the difficult task of finding such a wording that would not encompass the full scope of SAR, but would still include the notion that is required to include SAR that is related to migratory pressure. This is nevertheless an important factor in that we do not end up with having to screen SAR cases that do not have any resemblance to the issues related to migration. The wording taken from the return directive is a viable solution in our opinion and we could support that. At the same time, we realize the political importance to have SAR included in the text and this is something that most likely will be encountered during the negotiations with the EP as well. Therefore, we suggest that SAR issue would be further clarified and made more robust, if possible, in the recitals leaving the operative part as it is in the PCY compromise proposal.

Article 3a

Regarding art 3a new we would like to draw your attention to the reference made to RCD art 3. To our knowledge the COM has indicated that persons who have applied for international protection would not be eligible to reception services while subject to screening. As of yet art 3 in the RCD does not differentiate between the different circumstances of the applicants. This is something that needs to be kept in mind.

Article 6

In terms of the changes made by the PCY we do not have any specific comments. On the nature of the procedure, we would like to emphasize that in our particular case and perhaps in other MS's as well, it seems that the screening will, at least on the external borders, be done by the border authorities. In this regard our logic is that this procedure in terms of the duration and administrative burden should fit into the border control procedure like the second line check is part of the border check procedure. Emphasis in the screening should be on the registration and the security and vulnerability checks. Therefore, we feel that the duration of the screening presented by the commission should be the absolute maximum and the aim of fully filling in the pre-entry screening form should be balanced with the administrative burden imposed by the obligation. If for instance there seems to be little or no possibility to ascertain all the information in the form, such as the identity, the third country national should be forwarded to a follow-up procedure earlier rather than later.

Finally, we would like to request if the CLS could kindly provide the rational on the detention issue they presented in the meeting in writing as well.

FRANCE

Article 1

Rappeler que la France souhaite que les personnes débarquées à la suite d'une opération de sauvetage restent soumises au filtrage, sans pour autant être assimilées aux personnes ayant franchi irrégulièrement la frontière extérieure. Ce, en cohérence avec les discussions actuellement en cours sur les règlements Eurodac, Procédure et Gestion de l'asile et de la migration (AMR).

Pour éviter toute confusion, la France propose la précision rédactionnelle suivante:

«This Regulation establishes the screening at the external borders of the Member States of all third-country nationals

- a) who are apprehended by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State
- b) who are disembarked in the territory of a Member State following a search and rescue operation **and are not immediately leaving voluntarily to their country of origin or residence.**
- c) who have applied for international protection during border checks without fulfilling entry conditions before they are referred to the appropriate procedure

Article 2

En ce qui concerne le §8: La France s'oppose à la définition des données EUROPOL telle que proposée par la présidence portugaise. En effet, l'objectif de notre proposition d'amendement était de bien délimiter les données d'Europol qui seront criblées dans le cadre de la procédure de filtrage, **aux seules données sur les suspects et les condamnés** présents dans le Système d'Information d'Europol (SIE). C'est nécessaire au regard du renvoi à l'article 3 (1) (17) du règlement ETIAS qui définit les données d'Europol comme étant «*les données à caractère personnel traitées par Europa/ aux fins visées à l'article 18, paragraphe 2, point a), du règlement (UE) 2016/794*».

Elle demande donc que la rédaction suivante soit privilégiée:

'Europol data' means personal data processed by Europol for the purpose referred to in Article 18(2)(a), ~~(b) and (c)~~ of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;

Article 3

§1 - La France souhaite que les personnes débarquées à la suite d'une opération de sauvetage restent soumises au filtrage et ne soient pas assimilées aux personnes ayant franchi irrégulièrement la frontière extérieure. (cf. supra)

Par souci de clarté, elle propose cette précision, apportée sur la proposition initiale de la présidence:

Article 3 Screening at the external border

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

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

2. *The screening shall also apply to all 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 set out in Article 6 of Regulation (EU) 2016/399.*
3. *The screening is without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399, except the situation where the beneficiary of an individual decision issued by the Member State based on Article 6(5)(c) of that Regulation is seeking international protection.*

Article 3a

La délégation demandera le rajout de la mention de la procédure à la frontière dans l'alinéa a) du paragraph 1:

1. *For third-country nationals subject to the screening referred to in Article 3(1),*
 - a) *the application of the common procedures of the Asylum Procedures Regulation is determined by Article 26(3) **and where subjects to the border procedure by Article 41 of that Regulation***

Article 4

Sur le §1: la rédaction présentée n'intègre pas la proposition d'amendement de la France qui demandait que la restriction de liberté soit obligatoire pendant la durée du screening pour s'assurer de son efficacité. Dans le cas contraire, il semble très difficile de voir la valeur ajoutée du filtrage pour garantir l'efficacité de l'orientation vers les procédures d'asile ou de retour.

Sur le §2: Il conviendrait de préciser dans la dernière phrase que l'étranger peut quitter le territoire pour une destination où il est autorisé à se rendre, en dehors de l'espace Schengen.

La France propose la rédaction suivante:

1. *During the screening, the persons referred to in Article 3, paragraphs 1 and 2 shall not be authorize to enter the territory of member state.*

*Member States shall lay down in their national law provisions to ensure that those persons are **kept at or in the proximity to external border or in transit zones and** remain at the disposal of the competent authorities for the duration of the screening **to prevent any risk of absconding.***

2. *The screening shall also be discontinued when the third country national leaves immediately **voluntarily** the territory of the Member States **for his or her country of origin or a third-country in which he or she will be accepted***

GERMANY

General preliminary remark on Germany's position

Opinions within the Federal Government are still being formed in detail, not least because of our neutral role as holder of the Presidency in the last six months. For this reason, Germany maintains a scrutiny reservation on the Screening Regulation as a whole and on all articles. Against this background, we also expressly reserve the right to make further comments.

Germany continues to be committed to a fair, functioning, efficient and resilient Common European Asylum System (CEAS) and adheres to its position presented in the concept paper of 4 February 2020 ("Concept paper of the German Federal Government on Reorientation of the Common European Asylum System"). This means: In order to address the existing shortcomings of the current system, we believe it would still be best to reorient the CEAS on the basis of the three key points set out in the concept paper:

The Commission's drafts fall short of our proposals. At the same time, however, we recognise that the Commission, too, is trying to reach a compromise between the opposing positions of the Member States. Without abandoning our position, we are therefore prepared to play a constructive role in the further negotiations on the reform package, also on the basis of the Commission's proposals.

Germany is also striving to strike a balance between responsibility and solidarity at the highest possible level in the Commission's proposals. This means: We will advocate a high, binding and predictable level of solidarity, provided that significantly better solutions are found than in the current CEAS, also with regard to preventing irregular secondary migration and to the pre-entry procedure.

In this respect, we would like to start by saying that all procedural steps provided for in the draft regulation during the health, security and identity checks must comply with the requirements of the EU Charter of Fundamental Rights and the principles of the rule of law. In this respect, we have taken note of the Commission's assessment that its proposal for a screening regulation is primarily intended to be an additional information-gathering instrument and not a separate justiciable procedure.

In our view, however, the national laws of the Member States should provide for a system of effective legal protection in accordance with Article 47 of the EU Charter of Fundamental Rights where measures or decisions and the transition to the subsequent procedure, together with the debriefing form (Articles 13, 14), affect in particular the rights under Articles 3, 6 and 8 of the EU Charter of Fundamental Rights and where such legal protection is not indirectly guaranteed in other legal instruments. This is not sufficiently taken into account by the wording of the draft regulation. There may be an incorrect transition (border procedure instead of a regular asylum procedure under the Asylum Procedure Regulation). Member States should be required to make remedy proceedings as focused and practicable as possible in order, on the one hand, to continue to ensure the rapid implementation of the procedures and, on the other hand, to take sufficient account of the rights of those concerned in accordance with the provisions of the EU Charter of Fundamental Rights.

Irrespective of this, we believe that the special concerns and rights of families with minors and other vulnerable groups with a particular need for protection and procedural guarantees should be duly taken into account in the procedural acts described in the regulation. We therefore believe that additions to this end should be made.

Article 1

Subject to further scrutiny, in particular on the impact on vulnerable groups, and subject to our preliminary remarks, we are in principle satisfied with Article 1. We would be grateful if you could explain why the word “intercepted” has been included. We assume that the revised version (“irregular crossings ... by sea”) will also cover people who have fled or migrated from their countries of origin and are now present in a Member State after disembarkation, following a search and rescue operation. In our view, this must be ensured.

Article 2

We would first like to propose the addition of a definition of the term “external border”, similar to Article 2 (2) of Regulation (EU) 2016/399.

Furthermore, in view of the new reference in the definition of “identification” in number 4 of the EES Regulation, we would be grateful for clarification of whether the words “through” and “including” have been maintained intentionally or whether they could be deleted in accordance with the definition in the EES Regulation, so that both definitions are identical. We would also like to know why reference is made to the provisions of the EES Regulation, although the definitions differ.

Please explain why the definition of third-country nationals in number 5 does not make a blanket reference to Article 2 (6) of Regulation (EU) 2016/399, as in Article 2 (2) of the screening regulation. The reference methodology should be aligned.

In addition, please explain why numbers 3 and 6 add an explicit reference to the EES Regulation. The definition in the EES Regulation is fully reproduced in both numbers, and the wording in number 6 is also used in legal instruments other than the EES (e.g. ETIAS), so that a reference does not seem appropriate.

Where the draft contains definitions of terrorist and serious criminal offences in number 6 to be used in the framework of the provisions on planned ECRIS-TCN enquiries, a single ECRIS-TCN enquiry mechanism should be provided for the ETIAS, the VIS and the screening regulation. It should also include a uniform “flagging” solution for marking such ECRIS-TCN data sets to be included in the enquiry. At the moment, different solutions could be found in the ETIAS, VIS and screening regulations, including with regard to the offences covered by the “flagging”.

Furthermore, with regard to number 8, we would be grateful for an explanation, as Article 3 (1) no.17 of the ETIAS Regulation refers only to Article 18 (2) (a) of Regulation (EU) 2016/794.

Article 3

Regarding subsection (1):

Discussions regarding the Eurodac Regulation have shown that the Member States have different perspectives on whether search and rescue cases are to be classed as illegal border crossings and therefore entered in Eurodac under Article 14 (1). In this regard, we would refer to the Commission proposal to record search and rescue cases in accordance with Article 14a of the Eurodac Regulation in future, a proposal on which the Council has not yet stated its position.

In this context, we cannot accept the proposed changes to Article 3 (1) (b), as otherwise there is no way to ensure that all search and rescue cases regarding individuals who have fled or migrated from their countries undergo screening.

We would also ask for an explanation of whether, alongside search and rescue operations by the authorities, civil search and rescue operations are also covered by this regulation and would ask why, in regard to the reference to Article 14 (1) and (3) of the Eurodac regulation, the words “on the basis of the decision to turn him or her back” have not also been included. Would an additional reference to the Eurodac Regulation that is being negotiated at this time, rather than the current Eurodac Regulation, be advisable?

In regard to subsection (3), we would ask for an explanation of the formulation and would propose, for systematic reasons, the formulation “All third-country nationals who **<will>** benefit...”

Article 3a

We appreciate the inclusion of the reference to other legal instruments, but maintain a scrutiny reservation in regard in particular to the exclusion of all obligations under the draft Asylum Procedure Regulation until after the screening has ended. The coherence between the different legal instruments is the decisive factor here.

We must scrutinise again the consequences of excluding information obligations based on the reference in Article 3a (1) (a) to Article 26 (3) of the Asylum Procedure Regulation, particularly in regard to the obligations specified for authorities in Article 26 (1) (a) and (d) in the 2016 Commission proposal in regard to an efficient procedure and the rights of those concerned.

We expressly welcome the clarification in subsection (1) (b) regarding common standards for the reception of applicants for international protection during the screening.

We would appreciate additional clarification that the rights on the basis of other legal instruments of applicants for international protection will not be limited or impaired during the screening.

Article 4

Pending in-depth scrutiny, we generally welcome the addition in subsection (1) from a perspective of subsidiarity in the relations between the Union and its Member States.

In conjunction with Article 6 (1) and (2) and Article 8 (1) (b), these provisions encompass the obligation to remain in specific accommodation for the duration of the screening process.

Should this result in limits to freedom of movement, we would request a supplementary provision to the effect that infringements of freedom of movement are to be limited to the necessary minimum and that the procedural regulations implemented in national legislation must include in particular regulations ensuring legal protection in accordance with the requirements of the EU Charter of Fundamental Rights and the European Convention on Human Rights, if such legal protection is not already provided at least indirectly in other legal instruments.

Limits to freedom of movement must also have a legal basis and be proportionate. Restrictions on or deprivation of liberty must be limited to the absolutely necessary minimum. Detention orders are to be avoided if possible. There must therefore be alternatives to detention / alternative accommodation options, particularly in regard to vulnerable groups (see also the current decisions by the European Court of Justice from 14 May 2020 – C-924 and 925/19 PPU and from 17 December 2020 – C-808/18).

For the cases in subsection (1) in which individuals must be brought into the territory of the Member State for part of the screening (e.g. for examination in a hospital), please explain how the fiction of non-entry is to be dealt with.

Finally, we would be grateful for an explanation of the procedure if no suitable continuous accommodation and care for particularly vulnerable groups is possible. Would the procedure under subsection (2) then be applied?

Article 5

Pending closer scrutiny, we generally welcome the addition in subsection (1) from a perspective of subsidiarity in the relations between the Union and its Member States. We would request a supplementary provision to the effect that the procedural regulations implemented in national legislation must include in particular regulations ensuring legal protection in accordance with the requirements of the EU Charter of Fundamental Rights and the European Convention on Human Rights as noted in the preliminary remark and if such legal protection is not already provided at least indirectly in other legal instruments.

Article 6

We generally welcome the addition made by the Council Presidency in subsection (1) in regard to the use of other locations for the screening. However, we must make sure that this is in accordance with the other regulations of the asylum acquis, in particular the Asylum Procedure Regulation. It should therefore be made clear that this is an exception, for example when capacity at the border is temporarily exceeded.

Suggested wording: “Where a Member State cannot accommodate third-country nationals in those locations, *in particular because the capacity is temporarily insufficient*, it can resort to the use of other locations within its territory, *on a temporary basis and for the shortest time necessary*.”

See our remarks on Article 4 in regard to restrictions on liberty.

In accordance with recital 27, we would request an addition that during the screening, all those concerned are to be guaranteed a standard of living, care and accommodation in line with the EU Charter of Fundamental Rights and the European Convention on Human Rights and in accordance with their (protection) needs, and provided with access to medical (emergency) care and necessary treatment of illnesses. Special attention should be given to vulnerable groups (including victims of human trafficking or gender-based violence, pregnant women, the elderly, unaccompanied minors, families with young children and people with physical or intellectual disabilities).

In regard to subsection (3), we generally welcome the stipulation that the time spent awaiting and in the screening is to be kept as short as possible.

In regard to subsection (3) paragraph (2), we would be grateful for an explanation of why reference is made to the current Eurodac Regulation instead of the proposal that is currently being negotiated and how this regulation relates to the exclusion of specific persons from the screening under Article 3 (1) in conjunction with Article 14 (1) of the Eurodac Regulation.

Please explain whom this provision is aimed at. Why should people be at the external border for more than 72 hours for any purpose other than those which are also the aim of the screening?

The screening process should be expanded to explicitly include ascertaining family links, alongside identification, security checks, health checks, etc.

In regard to subsection 6 (a), we would propose clarification that an investigation “in accordance with” Article 9 should take place, as in the cases set out in Article 5, no obligatory health check is carried out in accordance with Article 9 (4).

With regard to subsection 6 (c), we would ask for clarification concerning which “databases” (plural) are referred to, as Article 14 (6) mentions only the Eurodac Regulation, i.e. the Eurodac database.

Regarding subsection 7 paragraph 2, we would be grateful for an explanation of who is meant by “national anti-trafficking rapporteurs”. We assume that this does not refer to the national rapporteurs also referred to in Directive 2011/36/EU. It is not clear what tasks this role involves and what qualifications the person must have.

We consider it necessary to provide for the possibility to involve a specialist in identifying and protecting victims of human trafficking, gender-based violence or other vulnerabilities.

GREECE

The following comments are without prejudice to our substantive reservation.

Article 1- Subject matter and scope

The new wording seems misleading in connection with the subsequent text as well as relevant the piece of legislation. In particular by deleting the wording “*unauthorized manner*” occurs a misunderstanding as regards the definition “*unauthorized crossing of the external border*”, included in article 2. For that reason it is essential to align these two articles.

Furthermore, the new wording “*irregular crossing*” of the borders, yet deriving from the Return Directive, we believe should be amended to illegal crossing. To that scope we highlight that the Lisbon Treaty refers to illegal immigration as well as within the new Frontex Regulation there are numerous references to illegal cross-border activities and illegal immigration.

The wording “*intercepted*” should be erased. When it comes to sea field, the wording could be interpreted as screening takes place while stopping illegal migrants. In particular, while managing a sea incident where interception takes place it is not possible to fulfill the task under Screening Regulation on a vessel due to objective difficulties. Same comment applies to Article 3 par.1 as well as to the provisions of Article 4.

Article 3 Screening at the external border

The same comments as regards the new wording from Return Directive, made in article 1, also apply for this Article. Irregular crossing shall be amended to illegal crossing and the wording intercepted shall be erased. .

Furthermore. the proposed text does not make it very clear as to whom the exception applies. Therefore we suggest the exception becomes a different subparagraph within this article. A proposed wording could be “*Third country nationals who are ~~turned back~~ returned or kept in custody, confinement or detention during the entirety of a period not exceeding 72 hours between apprehension and removal and for whom the Member State is not required to take the biometric pursuant to Article 14 (1) and (3) of Regulation 603/2013 for reasons other than the age, are excepted from the provisions of current Regulation*”.

Last but not least the wording “*transit zones*” in par. 2, it seems that derives from Schengen Borders Code and yet is not in line with the provisions of Regulation 2016/399 which refers to transit area (air borders).

Article 5 Screening within the territory

The verb “present” is rather general and leaves room for misinterpretation. To that end we suggest the following amendment. *Member States shall apply the screening to third-country nationals ~~present~~ found illegally staying within the territory and where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorized manner.*

The above proposed text derives from Regulation 603/2013 “Eurodac Regulation”.

Article 6 Requirements concerning the screening

The added text “Where a Member State cannot accommodate third-country nationals in those locations, it can resort to the use of other locations within its territory” seems rather problematic in the light of the implementation in practice of the EU-Turkey Joint Statement. In particular, the Joint Statement indicates, amongst others, that “All new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey. “ and “*Migrants arriving in the Greek islands will be duly registered.....*” as well as “....including the presence of Turkish officials on Greek islands...” and last but not least “*For every Syrian being returned to Turkey from Greek islands.....*”. Therefore, providing for a possibility to transfer unregistered illegal migrant within the territory seems rather contradictory to the arbitrary application of the Joint Statement by the Turkish side.

HUNGARY

Article 1 *Subject matter and scope*

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

The purpose of the screening shall be the strengthening of the control of persons who are about to enter the **territory of the Member States** ~~Schengen area~~ and their referral to the appropriate procedures.

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

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

Article 2 *Definitions*

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

1. ‘unauthorised crossing of the external border’ means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. ‘threat to public health’ means a threat to public health within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. ‘verification’ means the process of comparing sets of data to establish the validity of a claimed identity (one-to-one check), **as referred to in Article 3 (1) (13) of the EES Regulation (EU) 2017/2226**;
4. ‘identification’ means the process of determining a person’s identity including through a database search against multiple sets of data (one-to-many check), **as referred to in Article 3 (1) (14) of the EES Regulation (EU) 2017/2226**;
5. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article 2 Point 5, of Regulation (EU) 2016/399-;

6. ‘terrorist offence’ means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;
7. ‘serious criminal offence’ means an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;
8. ‘Europol data’ means personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;

Comments from Hungary on Article 2:

Regarding the definitions, we can accept the changes and the text of the new ones, however, as we have pointed out within our former written contributions, in Article 2, it would be necessary to introduce the definition of "vulnerable group" as a separate definition.

We are however still convinced that the definition of "vulnerable group" is required, to clarify exactly who is concerned as vulnerable person, especially as Article 9 (2) has a reference to the recast RCD and we think that the definition of vulnerable group should be less broad compared to the RCD, otherwise this can have negative effects on the effectiveness of the current draft regulation.

In this regard we think that the final definition should be drafted in line with the final text of the APR regulation, as only those person should be treated as vulnerable who are not subject to the border procedure set out in the APR. In this regard we think that the final definition should be drafted in line with the final text of the APR regulation, as only those person should be treated as vulnerable who are not subject to the border procedure set out in the APR. Furthermore and taking into account the suggestion made by the Presidency during the last meeting Frontiers WP we can also accept as a suitable solution to use the definition of “vulnerable persons” set out in the Return Directive.

Article 3

Screening at the external border

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

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

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

2. The screening shall also apply to all 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 set out in Article 6 of Regulation (EU) 2016/399.
3. ~~The screening is without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399, except the situation where the beneficiary of an individual decision issued by the Member State based on Article 6(5)(c) of that Regulation is seeking international protection.~~

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

Comments from Hungary

Regarding Article 3, we agree with the compromised text.

Article 3a - NEW Relation with other legal instruments

1. **For third-country nationals subject to the screening referred to in Article 3(1),**
 - a) **the application of the common procedures of the Asylum Procedures Regulation is determined by Article 26(3) of that Regulation**
 - b) **the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (...) is determined by Article 3(x) of that Directive**
2. **Without prejudice to the application of provisions on international protection, Return Directive 2008/115/EC shall apply only after the screening has ended.**

Explanation of the Hungarian position:

We think that not only the preamble, but the operational part of the text should also have a reference that that neither the Return Directive nor the draft Asylum Procedures Regulation applies during pre-screening and in this regard we welcome the content of the new article 3a, however we cannot accept that screening referred to in article 5 should be an exception (as a further justification please see our comments to Article 4).

Article 4
Authorisation to enter the territory of a Member State

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

Persons referred to in paragraph 1 may be detained for the purpose of preventing entry into the territory of the Member State. Detention shall be maintained for as short a period as possible, as long as the screening is in progress and executed with due diligence. The period of detention shall not exceed the period referred to in Article 6 paragraph 3.

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

Explanation of the Hungarian position:

In our point of view, the proposed compromised text is certainly a step in a right direction, however we are still convinced that detention is the most effective tool to prevent persons under screening from absconding before the procedure ends.

Taking into account the debates of the Frontiers WP on this issue we understand and share some arguments mentioned by the Commission (the fiction of non-entry cannot be applied to a person who has, spent years illegally in the territory of a Member State), but in the same time we must stress that the special situation of countries of transit such as Hungary (where illegal migrants usually spend only hours while trying to get as soon as possible to their countries of destination) must be also taken into account. In this regard we are still open to a compromise solution that aims to determine a specific time limit according to which the fiction of non-entry could be used to person who are only transiting illegally through a MS. The application of the principle of fiction of non-entry would also be an important element in order to avoid the abuse of asylum procedures, so in Hungary's view, it is essential to provide all the means at our disposal to be able to successfully combat secondary migration.

Article 5
Screening within the territory

Member States shall apply the screening to third-country nationals **present found** within their territory where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner.

Member States shall lay down in their national law provisions to ensure that those third country nationals remain at the disposal of the competent authorities for the duration of the screening.

Article 6

Requirements concerning the screening

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

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

4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.
6. The screening shall comprise the following mandatory elements:
 - (a) preliminary health and vulnerability check as referred to in Article 9;
 - (b) identification as referred to in Article 10;
 - (c) registration of biometric data in the appropriate databases as referred to in Article 14(6), to the extent it has not occurred yet;
 - (d) security check as referred to in Article 11;
 - (e) the filling out of a ~~de-briefing~~ **pre-entry screening** form as referred to in Article 13;
 - (f) referral to the appropriate procedure as referred to in Article 14.
7. Member States shall designate competent authorities to carry out the screening. They shall deploy appropriate staff and sufficient resources to carry out the screening in an efficient way.

Member States shall designate qualified medical staff to carry out the health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs shall also be involved, where appropriate.

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

Explanation of the Hungarian position:

When it comes to the timeframe of the screening we suggest to treat in the same manner those who were apprehended in the proximity of the border and those who were apprehended within the territory of the MS and in this regard to establish the same timeframe that should cover a longer period of time in comparison to the suggested one. With regard to the extension of the time limit, we suggest that, in addition to the disproportionate number of third-country nationals who need to be subject to the screening we should also introduce other factors (for instance the duration of the procedure for the determination of age) should also justify the prolongation of the time limit for the screening, as according to our experiences a lot of persons try to misuse the national migration and asylum system by declaring themselves as minors.

In many cases, the security risk posed by persons subject to the screening is not known in advance, however, the national authorities involved in the security checks need to be given sufficient time to take a reasoned position on this risk. The introduction of a longer timeframe is also justified because, in some cases, the person subject to screening could be subject to a quarantine obligation as a result of the health check. The measures and conditions to be ensured for persons requiring immediate care are also to be clarified. We furthermore suggest to align the text on the location of the screening with the text of Article 41a of the draft APR, as it provides more flexibility for the MS when it comes to the location of the screening.

ITALY

The following proposed amendments and comments are without prejudice of the Italian substantive reservation on the Screening Regulation proposal as a whole, due to the linkages with other pieces of legislation in the New Pact on asylum and migration.

Article 1

Subject matter and scope

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

The purpose of the screening shall be the strengthening of the control of persons who are about to enter the **territory of the Member States** ~~Schengen area~~ and their referral to the appropriate procedures.

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

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

COMMENT: *As regards the amendments on para. 1, although we understand that the intention of the Presidency was aiming at mainstreaming the scope of the proposal in order to avoid that the screening procedures would apply also to the TCNs rescued at sea whose travel was not connected with the purpose of irregular crossing borders, we believe that the new wording is not clear and may lead to doubts on the effective scope of the regulation. In fact, TCNs arriving on the territory of a MS following SAR operations in legal terms have not been apprehended or intercepted in the act of illegally crossing the border since they are rescued in the SAR area following an adverse event on the basis of the obligation to render assistance to persons in distress at sea and deliver them to a place of safety identified by the competent MRCC, established in the international law; therefore the border crossing does not take place either clandestinely or irregularly. As a result, the new definition, despite the PCY's intention, cannot really include this category of TCNs, thereby raising doubts in the interpreter as to whether or not these TCNs are subject to screening. For these reasons, we therefore prefer the original text of para. 1.*

Article 2 **Definitions**

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

1. ‘unauthorised crossing of the external border’ means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. ‘threat to public health’ means a threat to public health within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. ‘verification’ means the process of comparing sets of data to establish the validity of a claimed identity (one-to-one check), **as referred to in Article 3 (1) (13) of the EES Regulation (EU) 2017/2226;**
4. ‘identification’ means the process of determining a person’s identity including through a database search against multiple sets of data (one-to-many check), **as referred to in Article 3 (1) (14) of the EES Regulation (EU) 2017/2226;**
5. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article 2 Point 5, of Regulation (EU) 2016/399;
6. ‘terrorist offence’ means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;
7. ‘serious criminal offence’ means an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;
8. ‘Europol data’ means personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;
9. **‘search and rescue operations’ means operations of search and rescue as referred to in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979.**

COMMENT: With reference to the comment made on art. 1.1, we believe that it is preferable to include, among the definitions in art. 2, also the “SAR operations” as referred to in art. 2, para. 1, letter v) in the AMM Regulation proposal.

Article 3
Screening at the external border

1. ~~This Regulation shall apply to all third-country nationals who:~~

~~(a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14(1) and (3) of Regulation (EU) 603/2013 for reasons other than their age, or~~

~~(b) are disembarked in the territory of a Member State following a search and rescue operation.~~

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

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

2. The screening shall also apply to all 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 set out in Article 6 of Regulation (EU) 2016/399.

3. ~~The screening is without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399, except the situation where the beneficiary of an individual decision issued by the Member State based on Article 6(5)(c) of that Regulation is seeking international protection.~~

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

COMMENT: *As indicated in our comment on art. 1.1, we prefer the original definition of the TCNs subject to screening. Therefore, also as regards art. 3, we prefer the original text of para. 1.*

Regarding paragraphs 2 and 3, as indicated in our written comments submitted previously for this article, we still believe that, since an application for international protection made at the border can only be the expression of the intention to apply for international protection, therefore the expression “make an application” is more correct than the different “apply for/are seeking” international protection, which correspond instead to the formal presentation of an asylum application. As for the rest of the new draft of para. 3, we have no problem.

Article 3a - NEW
Relation with other legal instruments

1. For third-country nationals subject to the screening referred to in Article 3(1),
 - a) the application of the common procedures of the Asylum Procedures Regulation is determined by Article 26(3) of that Regulation
 - b) the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (...) is determined by Article 3(x) of that Directive
2. Without prejudice to the application of provisions on international protection, Return Directive 2008/115/EC shall apply **only** after the screening has ended, **outside transit or borders areas or locations referred to in art. 6 likewise ~~except for~~ the screening referred to in Article 5 and without prejudice to the provisions of the article 2.2.a of that Directive.**

COMMENT: as regards para. 2 of new art. 3a, we suggest the above indicated amendments. In fact, regardless of the underlying intentions for this new article, the wording of the second para. could be interpreted as meaning that the TCN would remain "at the border" up to 5 days (10 days in the cases provided for by the following art. 6, para. 3) and, in the absence of an application for international protection, should be introduced in the national territory on the basis of the Return Directive in order to let the MS issue the return decision and proceed with the subsequent return, while the TCN who, during the screening procedure, has made an application for international protection, would remain "at the border" pursuant to the procedure provided for by art. 41 of the "procedure" Regulation proposal [COM (2020) 611 final] and, in the hypothesis of a negative decision, would be returned in the context of the border procedure provided for by the following art. 41a. This possible interpretation of art. 3a, para. 2, could therefore constitute a "pool factor" for TCNs who would be, in fact, induced not to apply for asylum during the screening procedure, in order to avoid the asylum and expulsion procedures provided for by the above mentioned artt. 41 and 41a, by entering the territory of the MS at the end of the screening, to then submit the asylum request on its territory.

Article 4
Authorisation to enter the territory of a Member State

1. During the screening, the persons referred to in Article 3, paragraphs 1 and 2 shall not be authorised to enter the territory of a Member State.
Member States shall lay down in their national law provisions to ensure that those persons remain at the disposal of the competent authorities for the duration of the screening.
2. Where it becomes apparent during the screening that the third-country national concerned fulfils the entry conditions set out in Article 6 of Regulation (EU) 2016/399, the screening shall be discontinued and the third-country national concerned shall be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5(3) of that Regulation.
The screening shall also be discontinued when the third country national leaves voluntarily the territory of the Member States.

COMMENT: We still have reservations and doubts on this article, also with the new subparagraph 1 (also present in art. 5) which, while not explicitly mentioning the detention of the TCN for the entire duration of the screening, essentially requires the Member State to do so by making also the necessary changes to the national legislations, which would also be necessary in the Italian system.

Article 5
Screening within the territory

1 Member States shall apply the screening to third-country nationals ~~present found~~ within their territory where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner.

Member States shall lay down in their national law provisions to ensure that those third country nationals remain at the disposal of the competent authorities for the duration of the screening.

2. Third-country nationals who, having absconded, are illegally present within the territory of a Member State shall not be subject to a new screening, where they had been previously and fully screened by that or other Member State.

COMMENT: We reiterate the suggestion to include the aforementioned para. 2 (slightly modified with respect to the text presented during the first examination of the Regulation proposal) since we believe that this article should also specify the existence of the above mentioned exception to the general principle of mandatory screening referred to in para. 1.

Article 6
Requirements concerning the screening

1. In the cases referred to in Article 3, the screening shall be conducted at locations situated at or in proximity to the external borders. **Where a Member State cannot accommodate third-country nationals in those locations, it can resort to the use of other locations within its territory.**

2. In the cases referred to in Article 5, the screening shall be conducted at any appropriate location within the territory of a Member State.

3. In the cases referred to in Article 3, the screening shall be carried out without delay and shall in any case be completed within 5 days from the apprehension in the external border area, the disembarkation in the territory of the Member State concerned or the presentation at the border crossing point. In exceptional circumstances, where a disproportionate number of third-country nationals needs to be subject to the screening at the same time, making it impossible in practice to conclude the screening within that time-limit, the period of 5 days may be extended by a maximum of an additional 5 days.

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

4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.

5. The screening referred to in Article 5 shall be carried out without delay and in any case shall be completed within 3 days from apprehension.

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

- (a) preliminary health and vulnerability check, **where relevant**, as referred to in Article 9;
- (b) identification as referred to in Article 10;
- (c) registration of biometric data in the appropriate databases as referred to in Article 14(6), to the extent it has not occurred yet;
- (d) security check as referred to in Article 11;
- (e) the filling out of a ~~de-briefing~~ **pre-entry screening** form as referred to in Article 13;
- (f) referral to the appropriate procedure as referred to in Article 14.

7. Member States shall designate competent authorities to carry out the screening. They shall deploy appropriate staff and sufficient resources to carry out the screening in an efficient way.

Member States shall designate qualified medical staff to carry out the health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs shall also be involved, where appropriate.

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

COMMENT: *We welcome the integration in para. 1. Regarding para. 6, we still believe that the word “mandatory” should be deleted, since the preliminary health and vulnerability check as referred in art. 9 are not necessarily mandatory. For this reason we propose the changes indicated above in the text.*

LUXEMBOURG

Art. 6 §7

“Member States shall designate competent authorities to carry out the screening, ***in conformity with art.16 of Regulation (EU) 2016/399 (Schengen Borders Code)***. They shall deploy appropriate staff and sufficient resources to carry out the screening in an efficient ***and dignified*** way. Member States shall designate qualified medical staff to carry out the health check provided for in Article 9, ***and ensure access of third-country nationals submitted to the screening to emergency health care***. National child protection authorities and national anti-trafficking rapporteurs shall also be involved, where appropriate.”

MALTA

1 General Comments

Following clarifications by the Commission and textual amendments presented for a second reading, Malta has serious concerns about the added value of the Pre-entry Screening Regulation. We believe the proposed Screening Regulation will prove problematic to implement in the context of search and rescue of third country nationals in distress at sea who subsequently apply for asylum. Furthermore, the proposed Regulation will pose increased difficulties and administrative burden for frontline Member States when it comes to its implementation. Malta will only be in a position to support this proposed Regulation if third-country nationals disembarked following search and rescue who immediately make an application for asylum fall out of scope of this Regulation.

The legal fiction will not serve to deter migrants, mostly economic migrants, from crossing irregularly into Europe and will not curb secondary movements. Akin to our concerns on the mandatory application of border procedures in the proposed Asylum Procedures Regulation, it is not possible for the national authorities to uphold this legal fiction and apply national measures to ensure that third country nationals undergoing screening remain at their disposal for the duration of the screening, unless their movement is restricted through measures of deprivation of liberty. In this regard, Malta cannot support a provision which in practice entails the systematic detention of persons disembarked following search and rescue, most of whom express a wish to apply for asylum as soon as they are disembarked and should therefore be referred to the asylum process right away.

2 Specific Comments

The following proposed amendments and comments are without prejudice to our general position and the substantive reservation placed on the Pre-Entry Screening Regulation proposal as a whole, due to the links with other legislative instruments in the New Pact on Asylum and Migration.

Article 1

Third-country nationals disembarked following search and rescue who immediately make an application for asylum should fall out of scope of this Regulation.

Article 3

Pre-entry screening should apply to all third-country nationals who have ‘made an application for asylum’ at external border crossing points or in transit zones and who do not fulfil the entry conditions set out in the Schengen Borders Code rather than to third-country nationals who have lodged the application for international protection or ‘seeking’ international protection.

Article 4

Malta suggests the following amendment to sub-article (2):

When the third-country national is considered to fulfil the entry conditions set out in Article 6(5) of Regulation (EU) 2016/399 (Schengen Borders Code), 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.

Justification: in line with Article 6(5) of the Schengen Borders Code, third-country nationals who do not fulfil one or more of the entry conditions laid down in the Code, may be authorised by a Member State to enter its territory on humanitarian grounds, on grounds of national interest or because of international obligations. Identification, health and security checks are subsequently carried out in accordance with EU legislative instruments and national law. Once the third-country nationals are, by way of exemption, considered to have fulfilled the entry conditions, these should be admitted or referred to the appropriate procedures – in Malta's case it would be the asylum procedure since the absolute majority of cases are third-country nationals disembarked following search and rescue at sea who make an asylum application right away.

Article 5

Malta is concerned with this provision leaving it up to the discretion of the Member State to seek measures depriving the liberty of a person which might include detention. Malta strongly recommends that this Proposal regulates all possible measures which may be used to ensure that third country nationals remain at the disposal of the competent authorities for the duration of the screening, together with maximum timeframes.

Article 6

Malta maintains its reservations on the timeframes in this article based on the developments in Article 4. If third-country nationals disembarked following search and rescue are to be screened during the screening phase despite having made an asylum application (as opposed to within the asylum process), the 5+5 timeframes proposed are unrealistic and will only serve to overburden national authorities. Particularly, if the intention of the Proposal is for screening to continue on after the timeframes elapse and as the third-country national enters the asylum process, then Malta considers the timeframe to have no added value to the Member States.

NETHERLANDS

The Netherlands would like to avail itself of the opportunity to wish the Portuguese presidency all good luck during their presidency. We also thank the presidency for this opportunity to reflect in writing on the proposed articles 1 through 6 of the Screening Regulation, as released on 15 January 2021. The Netherlands is supportive of the general thrust of the provision. We would like to reiterate that the Netherlands feels that a screening procedure followed by a border procedure (including return) can have an advantageous effect on the number of persons trying to enter the EU illegally and thus be a repellent, and can suppress secondary migration of those who do.

However, as noted before and notwithstanding the continued positive approach of the Netherlands with regard to these articles, the provisions are of a technical nature and are often complex. The Netherlands will need to hold a scrutiny reservation to reflect more on paragraphs of the article, at a later stage. To ensure a continued dialogue on the text, the Netherlands can offer the following remarks on several parts of the provisions in order to allow for a swift progress to a wording supported by a majority of the member states.

In the interest of brevity we have only included segments where we would like to propose remarks. Changes in the text are set out in grey, proposed deletions in ~~strike through~~.

Article 1 - Subject matter and scope

As was stated during the meeting of the Working Party of 21 January 2021, we are in favour of the proposed wording by the presidency, as it allows for a horizontal application of agreed language, that will encompass crossings both by sea land and air.

Closer reading would lead us to suggest bringing the proposed wording closer to the agreed language used in the Schengen Border Code. Presumably no material divergence is intended, but nevertheless we would, for the sake of clarity, propose to unify the wording

The object of the screening shall be the identification of all third-country nationals subject to it and ~~the~~ **where appropriate by using technical devices the** verification against relevant **European and national** databases, that the persons subject to it do not pose a ~~threat to internal security~~ **public policy, internal security, public health or international relations**. The screening shall also entail health checks, where appropriate, to identify persons vulnerable ~~or~~ in the need of health care as well the ones posing a threat to public health.

Article 2 - Definitions

Specialists in the capital have raised the question if a referral to the directives mentioned in para 6 to 8 is necessary, as a referral to the Council Framework Decision 2002/584/JHA would technically suffice. To be sure, we support the thrust of the added paragraphs.

Article 3

With regard to article 3(1)(b) we remark that the wording after the word ‘except’ seems unnecessarily complex. If the thrust is that screening is not applicable to persons who will be detained and returned within 72 hours, this could be stated. Such exemption from the scope would not affect other actions taken under the scope of other regulations or national instruments, such as regulation (EU) 603/2013, also the exception should not be limited to forced return /removal, but may also apply to cases of voluntary return. To this end we propose the following.

(b) are disembarked in the territory of a Member State following a search and rescue operation.

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

Article 3a - NEW - Relation with other legal instruments

We note that the new article 3a does only partially alleviate the problems highlighted before, with regard to the scope. We understand that a mirroring paragraph is indeed needed in the reception conditions directive. We would like to point out that this should also take into account that third countries may request protection when arriving in the second member state, and the relation between the screening regulation and the reception conditions directive should be made clear, in particular that a period before a freedom restrictive measure should not be part of the receptions conditions directive. We urge the presidency to undertake this with some urgency.

With regard to article 3a(2) we would like to remark the following. We note that there is indeed room for an interpretation where the return directive *is* applicable to non-border cases within the scope of the screening regulation, without hampering its effectiveness. This would be possible using the interpretation of the court in case C-329/11 HvJ EU Achuchbabian (para.31), in which the court rules that authorities should be allowed to use a brief but reasonable time to identify the person. If this is so, indeed there is no need to exempt the return directive. However this should, at the very least, be clarified in a recital. If the assumption is that the measures taken already fall under the scope of the return directive, we cannot support this reasoning, as it would only serve to complicate the return process.

Article 4 - Authorisation to enter the territory of a Member State

With regard to article 4(2) we would like to remark that we fully support the thrust of the wording, which is to aim for an efficient allocation of resources. We propose to elaborate somewhat and include situations where the return or removal is apparent, to avoid situations where an obligation to conduct the screening could be supposed up a until the Third country national leaves, serving no purpose. For reasons of national interest, member states should have the opportunity to continue aspects of the screening.

2. (...)

The screening shall also be discontinued when **it is apparent that** the third country national **shall** leaves voluntarily the territory of the Member States. **Member states may continuing aspects of the screening for purposes of public policy or internal security.**

Article 5

We think the reference to restrictive measures is a good balance. We would however like to draw attention to our remarks under article 3a.

ROMANIA

Article 1 - Subject matter and scope

Scrutiny reservation for the following reasons:

Para 1: Regarding the removal of the third category of aliens – SAR – from the scope of the Regulation, in RO's opinion these persons are included in one of the two situations, respectively those detected with illegal entry or those present at the BCPs without fulfilling the entry conditions. We also consider that it is necessary to detail more PRES clarifications regarding the fact that the screening applies only to persons in SAR related to illegal migration and that this situation is covered by the wording in para 1.

Para 2 and 3: we still have a reservation on the purpose of the screening process, respectively the reference to the procedure to be followed. Taking into account the complexity of the asylum procedure as well as the powers of the competent authorities to carry out screening and those analyzing applications for international protection, in order to provide minimum relevant information on the type of procedure to be followed, further training is required in an area where the authority performing screening is not competent. Given that this is part of a Regulation (binding document), we consider that COM explanation is not quite sufficient - that the procedure to be followed will be determined by the asylum authorities. In our opinion, further clarification is needed with regard to the authorities involved, their powers and the process itself. Moreover, regarding the last sentence of para 3, we ask to clarify how health checks (as the term "*checks*" is used only in the context of health checks) can determine the type of procedure to be followed. In order to ensure clarity, we reiterate the need to replace the term "*checks*" with "*information*" to refer to the outcome of all checks carried out, not just those regarding health, because it is not the verification itself which decides the procedure to follow.

Para 4: In RO's opinion, clarification is needed on how this provision is applied, i.e. whether there are time limits (in the sense that the screening is carried out if the person is detected within a certain period after the date of entry). It should also be noted that, in view of the legal force of this instrument (Regulation), further clarification or guidance is still needed for MSs to ensure a uniform practice (e.g. authorities' competences, territorial application).

Article 3

We reiterate the observations made for Art 1, para 1.

Article 3a Relation with other legal instruments

Para 1: Whereas the provision in the APR, Art. 26 (3), refers to the expression of will, we ask for clarification as to whether the registration is made after the screening has been completed.

Para 2: In the same line with SI, we believe that it is necessary to reformulate that the exception provided in Art. 5 shall be without prejudice to the application of the provisions on international protection. Considering COM explanations on the application of the Return Directive in the case of Art. 5 at the same time as the screening procedure, we consider that there is a need for a specific provision to be made in this regard.

Article 4 – Authorisation to enter the territory of a Member State

Following the position expressed by COM regarding the impossibility of introducing detention-related provisions in the text, we want to see more detail on the other ways of respecting the purpose of the Regulation, other than detention. It is imperative for MS to find solutions that are reliable and tailored to the specificities of such situations. What will be the regime of the detention (the rules applicable are those from the Return Directive or APR/Reception Conditions Directive)?

Article 5 – Screening within the territory

We keep our scrutiny reservation and with the reiteration of the observations on Art. 1 para 4 and Art. 4 para 1. Furthermore, we support SI and consider it necessary to supplement the text with practical explanations for the detection of third-country nationals at internal borders where border checks are not lifted.

Article 6 – Requirements concerning the screening

Para 1 and 2: In view of the obligation laid down in Art. 8 para 1 (b), we find it useful to clarify whether these locations may be those used in the implementation of the APR or Return Directive.

Para 5: We also need more details on the procedure to be followed and the time limits to be observed in case a large group of persons is detected on the territory of a MS (considering that there is no possibility of extending the term).

SLOVAKIA

Draft compromise Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

Article 1

Subject matter and scope

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

The purpose of the screening shall be the strengthening of the control of persons who are about to enter the **territory of the Member States** ~~Schengen area~~ and their referral to the appropriate procedures.

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

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

Article 2

Definitions

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

1. 'unauthorised crossing of the external border' means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. 'threat to public health' means a threat to public health within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. 'verification' means the process of comparing sets of data to establish the validity of a claimed identity (one-to-one check), **as referred to in Article 3 (1) (13) of the EES Regulation (EU) 2017/2226**;
4. 'identification' means the process of determining a person's identity including through a database search against multiple sets of data (one-to-many check), **as referred to in Article 3 (1) (14) of the EES Regulation (EU) 2017/2226**;

5. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article 2 Point 5, of Regulation (EU) 2016/399;
6. 'terrorist offence' means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;
7. 'serious criminal offence' means an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;
8. 'Europol data' means personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;

Article 3

Screening at the external border

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

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

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

2. The screening shall also apply to all 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 set out in Article 6 of Regulation (EU) 2016/399.

3. ~~The screening is without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399, except the situation where the beneficiary of an individual decision issued by the Member State based on Article 6(5)(c) of that Regulation is seeking international protection.~~

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

Article 3a - NEW

Relation with other legal instruments

- 1. For third-country nationals subject to the screening referred to in Article 3(1),**

a) the application of the common procedures of the Asylum Procedures Regulation is determined by Article 26(3) of that Regulation

b) the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (...) is determined by Article 3(x) of that Directive

- 2. Without prejudice to the application of provisions on international protection, Return Directive 2008/115/EC shall apply only after the screening has ended, except for the screening referred to in Article 5.**

Article 4

Authorisation to enter the territory of a Member State

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

Member States shall lay down in their national law provisions to ensure that those persons remain at the disposal of the competent authorities for the duration of the screening.

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

The screening shall also be discontinued when the third country national leaves voluntarily the territory of the Member States.

Article 5
Screening within the territory

Member States shall apply the screening to third-country nationals ~~present found~~ within their territory where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner.

Member States shall lay down in their national law provisions to ensure that those third country nationals remain at the disposal of the competent authorities for the duration of the screening.

Article 6
Requirements concerning the screening

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

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

4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.
5. The screening referred to in Article 5 shall be carried out without delay and in any case shall be completed within 3 days from apprehension.
6. The screening shall comprise the following mandatory elements:
 - (a) preliminary health and vulnerability check as referred to in Article 9;
 - (b) identification as referred to in Article 10;
 - (c) registration of biometric data in the appropriate databases as referred to in Article 14(6), to the extent it has not occurred yet;

- (d) security check as referred to in Article 11;
 - (e) the filling out of a ~~de-briefing~~ **pre-entry screening** form as referred to in Article 13;
 - (f) referral to the appropriate procedure as referred to in Article 14.
7. Member States shall designate competent authorities to carry out the screening. They shall deploy appropriate staff and sufficient resources to carry out the screening in an efficient way.

Member States shall designate qualified medical staff to carry out the health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs shall also be involved, where appropriate.

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

SLOVENIA

Article 1 *Subject matter and scope*

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

The purpose of the screening shall be the strengthening of the control of persons who are about to enter the **territory of the Member States** ~~Schengen area~~ and their referral to the appropriate procedures.

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

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

Article 2 *Definitions*

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

1. 'unauthorised crossing of the external border' means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. 'threat to public health' means a threat to public health within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. 'verification' means the process of comparing sets of data to establish the validity of a claimed identity (one-to-one check), **as referred to in Article 3 (1) (13) of the EES Regulation (EU) 2017/2226**;
4. 'identification' means the process of determining a person's identity including through a database search against multiple sets of data (one-to-many check), **as referred to in Article 3 (1) (14) of the EES Regulation (EU) 2017/2226**;
5. 'third-country national' means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article 2 Point 5, of Regulation (EU) 2016/399;

6. **‘terrorist offence’ means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;**
7. **‘serious criminal offence’ means an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;**
8. **‘Europol data’ means personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;**

Article 3

Screening at the external border

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

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

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

2. The screening shall also apply to all 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 set out in Article 6 of Regulation (EU) 2016/399.
3. ~~The screening is without prejudice to the application of Article 6(5) of Regulation (EU) 2016/399, except the situation where the beneficiary of an individual decision issued by the Member State based on Article 6(5)(c) of that Regulation is seeking international protection.~~

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

Article 3a - NEW
Relation with other legal instruments

1. For third-country nationals subject to the screening referred to in Article 3(1),

a) the application of the common procedures of the Asylum Procedures Regulation is determined by Article 26(3) of that Regulation

b) the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (...) is determined by Article 3(x) of that Directive

2. Without prejudice to the application of provisions on international protection, Return Directive 2008/115/EC shall apply only after the screening has ended, except for the screening referred to in Article 5.

Article 4
Authorisation to enter the territory of a Member State

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

Member States shall lay down in their national law provisions to ensure that those persons remain at the disposal of the competent authorities for the duration of the screening.

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

The screening shall also be discontinued when the third country national leaves voluntarily the territory of the Member States.

Article 5
Screening within the territory

Member States shall apply the screening to third-country nationals ~~present found~~ within their territory where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner.

Member States shall lay down in their national law provisions to ensure that those third country nationals remain at the disposal of the competent authorities for the duration of the screening.

Provisions of paragraph 1 are without prejudice to the rules of border control on the internal borders of the Member States where a decision to lift controls is not taken yet.

Article 6
Requirements concerning the screening

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

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

4. Member States shall notify the Commission without delay about the exceptional circumstances referred to in paragraph 3. They shall also inform the Commission as soon as the reasons for extending the screening period have ceased to exist.
5. The screening referred to in Article 5 shall be carried out without delay and in any case shall be completed within 3 days from apprehension.
6. The screening shall comprise the following mandatory elements:
 - (a) preliminary health and vulnerability check as referred to in Article 9;
 - (b) identification as referred to in Article 10;
 - (c) registration of biometric data in the appropriate databases as referred to in Article 14(6), to the extent it has not occurred yet;
 - (d) security check as referred to in Article 11;
 - (e) the filling out of a ~~de-briefing~~ **pre-entry screening** form as referred to in Article 13;
 - (f) referral to the appropriate procedure as referred to in Article 14.

7. Member States shall designate competent authorities to carry out the screening. They shall deploy appropriate staff and sufficient resources to carry out the screening in an efficient way.

Member States shall designate qualified medical staff to carry out the health check provided for in Article 9. National child protection authorities and national anti-trafficking rapporteurs shall also be involved, where appropriate.

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

SPAIN

The Spanish delegation maintains a scrutiny reservation on the overall text of the proposal. The followings comments complement those previously sent in writing on the proposal as well as those presented during the discussion at the Working Party on Frontiers (21 January 2021):

Article 1

We have a substantial reservation with this article. We cannot support amendments and would prefer the previous version: referring to those who have crossed the external border in an unauthorised manner and in particular, including a specific reference to SAR operations.

We consider essential to keep a specific reference to those disembarked to a SAR operation, in order to stress this is the result of complying with international law obligation.

Article 2

We have a question about the proposed amendment for art.2.8, with regards to the inclusion of section b) and c) in the reference to article 18 (2) of Regulation (EU) 2016/794:

‘Europol data’ means personal data processed by Europol for the purpose referred to in Article 18(2)(a), (b) and (c) of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;

Art. 3(1) (17) of ETIAS Regulation only refers to art. 18(2) (a) (not to b and c) of (UE) 2016/794.

Article 3

We maintain our substantive reservation on paragraph 1. As mentioned in relation to article 1, we think it is important to keep a specific reference to SAR operations.

On the other hand, we find amendment in paragraph 3 provides more clarity and can support it.

Article 3a

Need for further clarification on paragraph 2 and the boundaries between screening at the external borders and the screening foreseen in article 5.

Article 4

We maintain our opposition to the legal fiction of non-entry behind this article. In addition to the legal obstacles to retain the migrant beyond 72h, according to our constitutional law, we reiterate our comments on the fact that the relation between the non-authorisation to enter the territory set out in this article and the refusal of entry ruled by the Schengen Borders Code (SBC) is not clear. The Spanish delegation wonders if it would be possible not to authorise to enter without issuing a refusal of entry according to Article 14 of the SBC.

In case of issuing a refusal of entry, according to Article 14 (3) of the SBC “persons refused entry shall have the right to appeal”. Is this remedy included into the screening phase or will it be possible only after the end of it? The Spanish delegation considers that more clarity is needed on this point.

Additionally, we also have doubts concerning the issuing of an entry ban in the context of the screening (as the result of it), given that, according to that legal fiction, the person never entered the territory and, consequently, the conditions of Article 11 of the Return Directive are not met. We wonder what would be the legal basis for issuing an entry ban in this case; this question is especially important because MS are obliged to issue an entry ban in the cases foreseen in Article 11 (1) of the Return Directive, and they are able to issue it in another cases.

On the other hand, further focus should be placed on the obligation of the third country national to remain at the disposal of the competent authorities, providing for consequences in terms of the procedural rules to apply to that TCN subsequently.

Amendment in paragraph 2 does not bring add value, in our view.

Article 5

Need to further clarify the boundaries between screening in article 3 and 5. In both cases, migrants are present in the territory.

Moreover, since as foreseen in new art. 3 a, the Return Directive will apply before the screening is concluded: need for clarification on how return provisions (including on detention) will affect this obligation to ensure third country nationals remain at the disposal of the competent authorities (what if there is not a reasonable prospect of removal?).

Article 6

We can accept amendments in article 6. On paragraph 6.a, we welcome the reference to a pre-entry screening form, instead of a de-briefing form, but we maintain our position on the need to simplify the content of the form (to be considered in art. 13 and the annex).

SWEDEN

Article 1

We believe “the **object** of the screening” should be “the **objective** of the screening”

Article 3 and 6

When referring to the Eurodac regulation in article 3 and 6 we might have to update it to the new regulation if it will have been adopted by then.

NORWAY

Reference is made to Denmark's comment during the informal VTC meeting of the Working Party on Frontiers on 21 January, regarding legal references in the draft compromise proposal. Here Denmark brought the attention to the fact that several legal references which are not legally binding for them have become part of the regulation's formal text. Hence, it was important that it became clear that this fact should not in any way change the legal obligations on Denmark's behalf. Denmark proposed to either remove the references from the text, or elucidate in the preamble to the regulation that they did not constitute legal obligations on those states for which they are not binding.

The European Commission replied that those references were not intended to make any changes to the legal obligations of the new compromise proposal of the regulation, but were merely inserted into the text for pedagogical reasons. They do not constitute any new legal reality and are clearly not binding for Denmark nor the Schengen associated countries.

Norway would here like to express the same view as Denmark. In the new compromise proposal of the regulation several legal references from existing EU law, not binding on Norway, has been written into it. Norway would like to propose that references to existing EU law that are not binding on all parties to the Screening Regulation should not be part of the formal text of the regulation. Alternatively, if this cannot be accommodated, we align ourselves with the Danish proposal of confirming that such references are not legally binding in the preamble.

SWITZERLAND

Article 2

Regarding paragraph 6, we remind that the Directive (EU) 2017/541 is not part of the Schengen acquis and that Switzerland is therefore not bound by it.

Regarding paragraph 7, we remind that the Council Framework Decision 2002/584/JHA is not part of the Schengen acquis and that Switzerland is therefore

Article 3a

Regarding paragraph 1, we remind that the Asylum Procedures Regulation and the Reception Conditions Directive are not part of the Schengen or Dublin acquis and that Switzerland is therefore not bound by them.

Articles 4 and 5

Switzerland welcomes that the compromise text identically added in articles 4 and 5 still leaves flexibility to the Member States to use other means than detention in order to ensure that a third-country national remains at the disposal of the competent authority of the screening.

Regarding the screening within the territory, the new provision in article 5 would be a legal and practical issue for us if it meant to put third-country nationals who seek asylum in detention during the screening. We remind that third-country nationals who seek asylum cannot fall under the application of the Return Directive during the screening. Our current national asylum law states that asylum seekers are in principle not kept in closed facilities during the asylum procedure. However, asylum seekers have a duty to cooperate and therefore an obligation to remain at the disposal of the asylum authorities during the asylum procedure. In our opinion, the duty to cooperate (with negative consequences for the asylum procedure in case of non-cooperation) is enough to ensure that third-country nationals who seek asylum remain at the disposal of the screening authority.

Article 6

Regarding paragraph 1, Switzerland welcomes the added flexibility in the compromise text. For Switzerland it is important that the low number of asylum seekers arriving at smaller airports could be screened in an existing infrastructure, e.g. in a transit zone of a bigger airport.