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MEETING DOCUMENT

From:	Presidency
To:	Working Party on Frontiers
N° Cion doc.:	11224/20
Subject:	Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817

In view of the Informal VTC of the members of the Working Party on Frontiers on 11 March 2021, delegations will find enclosed a revised Presidency compromise proposal.

This document contains an amended text of Articles 1-6 of the Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817.

An additional Article 6a on the obligations of third country nationals has also been introduced.

Changes to the original text (as contained in document ST 11224/20) have been placed in **bold** or marked with ~~strikethrough~~. Changes to the previous version of Articles 1-6 as contained in WK 463 2021, have been placed in ***bold italics*** or marked with ~~*strikethrough italics*~~.

Delegations are also informed that a new recital will be introduced, linked to Article 5: New recital 18a)
" *Member States should apply the provisions on screening within the territory to third country nationals*

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apprehended in connection with unauthorised crossing of internal land borders of the Member States where the controls have no yet been lifted."



**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 ***of third country nationals who have not been subject to border checks 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~~ ***as well as of persons illegally staying within the territory of the Member States and who have not been subject to border checks at the external borders*** and their referral to the appropriate procedures.

The ~~object~~ ***objective*** of the screening shall be the identification of all third-country nationals subject to it and the verification against relevant databases that ~~the~~ ***those*** persons ~~subject to it~~ do not pose a ***security risk*** ~~threat to internal security~~. The screening shall also entail health checks, where appropriate, to identify persons vulnerable ~~and~~ ***or*** in the need of health care as well ***as*** 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. ***‘security risk’ means the risk of a threat to public policy, internal security or international relations for any of the Member States, as referred to in Article 3 (1) (6) of the ETIAS Regulation (EU) 2018/1240;***
7. **‘terrorist offence’ means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;**
8. **‘serious criminal offence’ means an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;**
9. **‘Europol data’ means personal data processed by Europol for the purpose referred to in Article 18(2)(a), ~~(b)~~ and ~~(c)~~ of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;**
10. ***‘biometric data’ means fingerprint data or facial images or both, as referred to in Article 4 (11) of the Interoperability Regulation (EU) 2019/817;***
11. ***‘Interpol databases’ means the Interpol Stolen and Lost Travel Document database (SLTD database) and the Interpol Travel Documents Associated with Notices database (TDAWN database) as referred to in Article 4 (17) of the Interoperability Regulation (EU) 2019/817;***

12. ***‘vulnerable persons’ means minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence as referred to in Article 3 (9) of Directive 2008/115 EC;***
13. ***‘screening authorities’ means all competent authorities designated by national law to carry out one or more of the tasks under this Regulation;***
14. ***‘Search and Rescue Operations’ means operations of search and rescue as referred in the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979.***

Article 3

Screening at the external border

1. This Regulation shall apply to all third-country nationals, ***regardless of whether they have applied for international protection***, who:
 - (a) are apprehended in connection with an unauthorised crossing of the external border of a Member State by land, sea or air, except third country nationals for whom the Member State is not required to take the biometric data pursuant to Article 14 (1) and (3) of Regulation (EU) 603/2013 for reasons other than their age, or
 - (b) are disembarked in the territory of a Member State following a search and rescue operation ***and do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.***

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

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

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

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

Article 3a - NEW

Relation with other legal instruments

1. For third-country nationals subject to the screening referred to in Article 3(1) (a) and (b),
 - a) **the registration of the asylum application in accordance with of the common procedures of the Asylum Procedures Regulation is determined by Article 26(3) and Article 27(5) of that Regulation**
 - b) **the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (...) 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 or national provisions respecting Directive 2008/115/EC shall apply only after the screening has ended, except for the screening referred to in Article 5.**

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 to prevent any risk of absconding.
2. Where it becomes apparent during the screening that the third-country national concerned fulfils the entry conditions set out in Article 6 of Regulation (EU) 2016/399, the screening shall be discontinued and the third-country national concerned shall be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5 (3) of that Regulation.
The screening may also be discontinued when the third country national leaves voluntarily the territory of the Member States, for the country of origin, residence or another third country where they are accepted.

Article 5

Screening within the territory

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

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

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, ***unless qualified medical staff consider it as not necessary***;
 - (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~~ **the screening** authorities ~~to carry out the screening. They shall~~ **and ensure that they** deploy appropriate staff and sufficient resources to carry out the screening in an efficient way.

Member States shall **ensure that the screening authority includes** ~~designate~~ qualified medical staff to carry out the **assessment and 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~~ **screening** authorities may be assisted or supported in the performance of the screening by experts or liaison officers and teams deployed by the European Border and Coast Guard Agency and the [European Union Agency for Asylum] within the limits of their mandates.

Article 6a - NEW

Obligations of third country nationals submitted to screening

1. ***The third country nationals subject to screening shall remain, for its duration, at the disposal of the screening authorities, in the location designated for that purpose.***
2. ***They shall cooperate with the screening authorities in all elements of the screening as set in Article 6 (6).***