ANNEX

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

Article 5

As the screening on the territory has to be carried out solely once after apprehension/interception, we would like to add in the first paragraph that the same TCN should not be subjected to repeated screenings. Furthermore, we would like to add that a hit to any of the consulted databases should serve as a proof that the TCN has already been subjected to the screening in another MS (as this would mean that this person would already have been arrested/apprehended in another MS which would have had the obligation to carry out the screening).

Article 9

As previously stated, we consider that «*where relevant* » at the beginning of §2 is too broad and too vague. We believe that the vulnerability assessment should always be carried out.

We also support the reasoning of the Presidency and the deletion of §4.

Article 13

We would like to allow the authorities to fill in the form as soon as they obtain any information, and especially if the person is transferred to different authorities. We would thus like to replace « *on completion of the screening* » by « *during the screening* » in §1.

We would also like to add a mention on the screening form indicating if the identity has been verified or not.

Article 14

Art.3§1 states that TCN apprehended or intercepted in connection with an irregular crossing by land, sear or air are subjected to the screening, except those who are turned back, or who are kept in custody, confinement or detention during the entirety of a period not exceeding 72h. In those cases, the screening shall apply where they physically remain at the external borders for more than 72 hours. This means a decision has been issued following their apprehension to justify their detention, and before the screening. The screening only applies after 72 hours.

We would thus like to make it clear in §1 that a refusal of entry can be delivered before the end of the screening, as the title of the article (*outcome of the screening*) can be misleading.

Regarding §2 concerning TCN who apply for international protection at the external border crossing points, the asylum acquis is not postponed after the end of the screening but runs in parallel (art.3a§1). It means that as soon as they apply for international protection, they shall be referred to the asylum authorities. It is thus misleading to say that the outcome of the screening will be to refer the TCN, together with the screening form, to the asylum authorities.

In §4, we should align the wording with §1and say « *have not* ***made an application*** *for international protection* ».

Article 18

In art.35a§2 (para **4** of art.18), we would like to add that in case where the Etias National Unit has provided an opinion, the screening form will also be transferred to them. We suggest adding « *When the Etias National Unit has provided a reasoned opinion, the screening form referred to in art. 13 should also be transferred to that National Unit* ».

Article 21

As stated by NL during the meeting, we support the addition of references to the entry into force of the relevant databases, to make it clear that the identity and security checks as defined in the regulation can only be possible if the necessary tools and databases are effectively in place.

BULGARIA

Bulgaria maintains a scrutiny reservation of the whole Screening Regulation and a reservation on the substance of Articles 4, 6 and 14.

Article 7 Monitoring of fundamental rights

As we have stated during the first round of discussions, it is difficult for us to comment on the monitoring, as we do not know exactly what rights and obligations the TCN has during the screening. We look forward to seeing the new article on "Obligations" so that we can take it into account in our position. We believe that the issue of TCN's rights during the screening should be addressed, e.g. do they have the right to a lawyer, and do they have the right to appeal against the detention or restriction of movement?

We would like to thank the Presidency for the new wording in the first indent of paragraph 2, which addresses the possibility of using existing MS mechanisms to ensure respect for fundamental rights. We would like to support the comments of some MS in previous discussions on the need to give MS enough time to adapt national legislation and monitoring mechanisms in line with the requirements of the Regulation.

Article 8 Provision of information

We thank the Presidency for the revision of this article.

However, we still have some concerns. We believe that without it being clear exactly what the rights and obligations of TCNs are, this provision cannot be implemented. A distinction must be made between the provision of information on rights and obligations in relation to border control, detention and rights and obligations in connection with the asylum procedure. We reiterate that border guards are not qualified to know the rules of the asylum procedure in depth.

Paragraph 1 (a) retains the text that information should be provided on the possible result of the screening, which includes the possibility for the person to be relocated. We believe that this is a pull factor and stimulates people to apply for protection. The link between this text and point (f) of paragraph 2 makes things even more complicated, as the person is informed about the conditions for relocation.

We still have concerns about the burden that the border guard will have to carry, in addition to his border control functions, with all these new functions of providing information and referring to other procedures. We take note of the revision of paragraph 4 and the opportunity given to EU agencies to assist MS in providing this information. However, we think that amendments are still needed in order to optimize the process for provision of information. In various acts in the field of return and asylum there are requirements to provide information in the form of leaflets. Therefore we would like to propose to consolidate all these obligations for providing information in one leaflet. We would like to propose to the Presidency to consider adding a text addressing the leaflets similar to the texts in current Regulation (EU) 604/2013 or in the proposal for Regulation on Asylum and Migration Management.

Article 10 Identification

We welcome the added paragraph 6, which refers to national legislation in the field of identification.

Article 11 Security check

We can support the new wording under paragraph 1.

Article 13 Screening form

Bulgaria can accept the change in the name of the form.

Under para 1 (c) we would like to propose the following amendment:

c) information on vulnerability identified during the screening where applicable

Under para 2 (a), we propose to align the text with the definitions in Article 2 and use "unauthorised crossing":

***(a)** reason for unauthorised crossing, entry, and, where appropriate illegal stay or residence, including information on whether the person made an application for international protection;*

Article 14 Outcome of the screening

We maintain our reservation on the substance of this article, but we would like to thank the Presidency for the compromise proposal on this article and for taking into account some of our concerns, such as deletion of the second sentence of paragraph 2. We are positive that the text is moving in the right direction.

On paragraph 1, we would like to propose the following amendments:

1. The third country nationals referred to in Article 3(1) of this Regulation who

*– have not **made an application** ~~applied~~ for international protection ~~and~~*

~~– with regard to whom the screening has not revealed that they fulfil entry conditions set out in Article 6 of Regulation (EU) 2016/399,~~

shall be referred to the competent authorities to apply procedures respecting Directive (EU) 2008/115/EC (Return Directive).

In cases not related to search and rescue operations, entry may be refused at the border crossing point in accordance with Article 14 of Regulation 2016/399.

The proposed addition is in line with part B of Annex 5 of Regulation 2016/399. We would like to make it clear that it will not apply at the green borders.

We would like to place a scrutiny reservation on paragraph 5, as the text of article 25 of APR is still not clear.

Article 21

We welcome the Presidency's compromise proposal and the inclusion of a period for the entry into force of the Regulation. At this stage, we place a scrutiny reservation, as we are still analyzing whether the proposed period of 6 months will be sufficient.

CROATIA

As a general comment on the draft compromise proposal of the Screening Regulation, **we emphasize that Croatia manages the longest EU external land border and therefore it is very important timely implementation and full access to all EU information systems and their interoperability. So far, Croatia is carrying out technical preparations for the establishment of Entry/Exit System and ETIAS, but in order to have access to all relevant information systems, such as EES and VIS, it is important that Croatia become a member of the Schengen area. So far, EES and full access to VIS is limited only to the Schengen Member States**.

Article 9, paragraph 1

This provision will lead to an excessive burden and the need to employ a great number of medical staff, since health checks have to be carried out only by qualified medical staff in accordance with Article 6 (7). We propose to change the wording in such a way that in the first sentence, a preliminary assessment of the general condition of the third country national is mentioned first, while medical check is left optional as the possibility later in the text as follows:

"Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a preliminary ~~**health**~~ check of the general state of the person ~~medical examination~~ with a view to identifying any needs for immediate care or isolation on public health grounds, ~~unless~~ and, based on the circumstances concerning the general state of the individual third-country nationals concerned and the grounds for directing them to the screening, the relevant competent authorities ~~are satisfied~~ may **consider** that ~~no~~ preliminary ~~medical~~ **health check** screening is necessary."

CZECHIA

Article 7

We welcome the revisions that were made in Article 7 although we are still not persuaded about the added value of this provision and think that existing monitoring mechanisms should be used instead.

Furthermore, in the last subparagraph paragraph 2, we would welcome if the general guidance for Member States, that FRA would provide, included also monitoring methodology appropriate training schemes. We are of the opinion that a common methodology and training or a handbook could help ensure uniform approach in Member States.

*The fundamental Rights Agency shall issue general guidance for Member States on the setting up of such mechanism**, ~~and~~** its independent functioning**, monitoring methodology and training schemes.***

Article 8

Paragraph 3

We propose adding „where needed" at the beginning of the last sentence as not all vulnerable persons automatically need special provision of information.

***Where needed,** it shall be provided in an appropriate manner in the case of vulnerable persons.*

Article 9

Paragraph 2

We propose a linguistic change:

Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, and ~~collect~~ information on possible special reception or procedural needs **shall be collected.**

Article 11

Paragraph 2

First, we would like to repeat our concern with regard to the use of words "**convictions related to terrorist offences and other forms of serious criminal offences are concerne**d" in Art. 11 Para 2. We are aware that the aim is to cover only serious offences. That is in principle understandable, however, the ECRIS-TCN does not include any convictions. The ECRIS-TCN includes only **data records** as described in Art. 5 of the ECRIS-TCN Regulation (2019/816). Data records are alphanumeric data and possibly fingerprints, if available, of a third-country national and code of the Member States holding information on previous convictions of third-country nationals (code of the convicting Member State). ECRIS-TCN does not include information on conviction. ECRIS-TCN **does not** include information on category of criminal offence, level of participation, category or duration of sentence or any other measures such as suspended penalty, pardon, amnesty, release on parole, rehabilitation, etc. Such information can only be retrieved from the **national criminal record of the convicting state. Therefore, we would like to repeat our proposal, i.e. to replace "convictions" by "flags".**

Second, CZ would like to see a similar assurance (**that data retrieved will be always verified against the national criminal record database of the convicting state**) in the normative text of the Screening proposal, similarly as it was done in the ETIAS consequential amendments.

Only information from the national criminal record of the convicting state can confirm existence of previous convictions, not the data or the flag themselves. Therefore, we propose a new point to be added in the preamble as well as in Article 11:

Preamble

(x) data retrieved from the ECRIS-TCN system should not of itself be taken to mean that the third-country national concerned has been convicted in the Member States that are indicated. The existence of previous convictions should only be confirmed based on information received from the criminal records of the Member States concerned.

Article 11 Para xy:

The data from ECRIS-TCN may only be used for the purpose of verification by the competent authority of national criminal records. The national criminal record shall be consulted during the screening or within the follow-up procedures.

Paragraph 3

The revised text includes wrong references to paragraph 3 – should be paragraph 2.

Article 12

Paragraphs 3 a 4

The text includes wrong references to Article 11 (3) - should be Article 11 (2).

Article 13

Paragraphs 1 and 2

We propose revising letter c) (information on vulnerability identified during the screening) – it should correspond to the wording used in Article 9 Para 2 (information on possible special reception or procedural needs).

Furthermore, although in Para 2 we see a possibility to include any other relevant information in the screening form, we are of the opinion that at least one point shall be added in Para 1 – i.e. information on whether the identity of the person was verified and if so, based on which document or, that the identity data are based only on the information provided by or obtained from the person and could not be verified. We consider this information essential as in a lot of cases it will not be possible to verify the identity of the third country national.

On top of that, we propose replacing "should" by "shall" in paragraph 2.

1. ....

....

c) information on vulnerable situation or possible special reception or procedural needs identified during the screening;

d) information on whether the identity of the person was verified or, as the case may be, that the identity data are based only on the information provided by or obtained from the person and could not be verified.

*2. Where available, the following data ~~should~~ **shall** be included:*

….

Article 18 (Article 35a ETIAS Regulation 2018/1240)

Paragraph 3

We would like to ask for a clarification – how will the procedure work in practice? In many cases the data will be sensitive – what information shall be included in the reasoned opinion in such cases? Will there be a handbook specifically related to screening or does the Commission intend to revise the existing or upcoming handbooks regarding borders, returns, ETIAS, EES etc.?

Article 21

A few provisions of the proposed regulation will require adaptation of the Czech law. Therefore, a 6-month transition period will not be sufficient. **We would need a transitional period to implement the regulation, preferably of two years.**

At the same time, we can support the intervention made by the Finnish delegation at the previous meetings that we should strive for a flexibility here to reflect the Member States' possibilities since not all Member States necessarily have to be ready at the same time. The regulation could provide for a maximum limit of preferably two years.

Or another solution could be, similarly to the solution in Regulation (EU) 2017/458 as regards the reinforcement of checks against relevant databases at external borders, to provide for a procedure for prolongation of the transitional period in specific situations.

DENMARK

Article 8(2)f

The purpose of the screening is the strengthening of the control of persons who are about to enter the territory of the Member States. The object of the screening is (amongst other) 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.

In our opinion, the processing of personal data by competent authorities in connection with such border control will in many cases be covered by directive (EU) 2016/680 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA (and not GDPR).

We therefore propose that article 8(2)(f) (provision of information) of this draft also refer to article 13 (information to be made available or given to the data subject) in the above mentioned directive 2016/680.

Article 10(4)

Should the biometric data used for SIS searches be the same as used for the search in CIR (taken live)?

Article 11(2)

The reference to the querying of specific Europol data is understood as a means to determine which Europol data should be queried and not the regulatory basis for the querying of Europol data. Can the Commission confirm this understanding?

The question is raised, as Regulation 2016/794 does not apply to Denmark. However, the agreement between Denmark and Europol does allow for access to the Europol data processed for the purpose referred to in Article 18(2),

point (a).

Similar situations apply to the Schengen associated countries.

Also, does the access of the competent authority of this regulation to SIS not require amendments to the SIS regulations, particularly the articles on national competent authorities having a right to access data in SIS?

Article 12(1)

A consultation between a competent authority and the SIRENE Bureau of the alert issuing Member State seems to deviate from the point of departure for SIRENE bureau, which is that SIRENE Bureaux communicate with other SIRENE Bureaux. Can the Presidency elaborate on the suggested structure?

In case there is a hit in CIR and/or SIS using biometric data, should this hit be verified by the MS?

Article 12(2)

Could the Commission elaborate on the meaning of ”access to consult the file corresponding to that match in the respective information system” when the match is generated by a SIS alert?

Article 12(4)

The reference to article 11(3) should be revised to 11(2).

Article 13(1)

In regards to “(c) information on vulnerability identified during the screening” - the sentence “as referred to in article 9(2)” - could be added.

Article 14(1)

How should the Form be transmitted? And within what time interval?

Article 14(7)

We suggest that the proposed wording ”Where necessary, the checks set forth under this Regulation may continue within the subsequent procedure” is replaced by the following:

”Where checks set forth under this Regulation cannot be completed within the time limits set out in Article 6 due to extraordinary circumstances, the checks may continue within the subsequent procedure when necessary.”

Article 18(3)

In article 35a (3), 1. section, should the text not read “National Units ~~and~~ or Europol on the one part”?

In article 35a (3), 2. section, it is regulated that an ETIAS National Unit or Europol should inform the competent authority “in any appropriate manner”. Perhaps it could be specified what constitutes an “appropriate manner”?

FINLAND

Article 9

During the wp meeting the concern relating to the health check was raised and we would like to reiterate some of the concerns here. We understand the need and purpose of the health check especially in relation to SAR and situations where a person is visibly not in good physical or mental health. That being said, a mandatory consultation of a medical expert seems excessive in some cases, for example regarding persons that seem to be in good physical condition. Law enforcement officers in the field are in constant contact with people in varying physical and mental states. They make these estimations on daily basis in order to ascertain if the person is in need of medical care or other support. Therefore, we would like to reiterate our request for example to modify the nature of the health check to take into consideration situations where the police or border guard officer can reliably ascertain that the third country national is not in need of medical assistance. A mandatory health check could be foreseen especially in cases of SAR and where the circumstances require it like situations of migratory pressure.

In light of the above, we suggest that the preliminary health check is something that the authority responsible of the screening conducts on first contact. An actual medical examination by a health care professional would only be mandatory in cases of SAR, in situations of migratory pressure and on the justified request of the third country national (chronic condition etc.).

Article 13

In order for the screening form to fulfill the needs of the follow-up procedures, we suggest adding an indication regarding possible security threat and possibly the findings in this regard (hit in SIS etc.) especially in relation for example to the mandatory border procedure which relies on this security threat information from the screening.

Additional information could be that a health check has been done, given that there is already some discretion in doing the health check. Provided that health information is something that can be present on the form, information regarding for example about permanent medication could be included. If this is not possible, merely an indication that if the health check was done or not and perhaps indication that no medical concerns exist or doesn't exist without identifying them.

Also following additional fields could be considered:

- information concerning the electronic identity and electronic devices, like mobile phone number, IMEI –code of mobile, email address
- information concerning the group with whom the screened persons was apprehended (possible networks and connections with other migrants)

Article 14

We can appreciate the explanation by the commission and the common application of art 14 of the SBC at a PCB. However, in real life the reality at the border between Russia and Finland is that we have SAR operations which leads to a refusal of entry according to the SBC through a BCP due to the local geography. We are concerned that the exclusion of SAR cases in the application of art 14 of the SBC in the scope of the screening will cause unnecessary problems at our external border.

We would like to ask to get some clarity regarding art 14 and the interpretation of situation where a TCN is found within the territory and is already registered in EURODAC (CAT1 or CAT2) and the screening would have already be done in some other MS. In these cases (prior registration already done), should we have in art 14 a separate outcome for this possibility where the TCN is referred to the procedure to ascertain the MS responsible outlined in the AMR for possible transfer to the responsible MS. In addition, could it be considered that if a person is registered in line with the EURODAC regulation (depending if CAT1 or CAT2) and is found within the territory, there could be a derogation in regards the applicability of all the mandatory elements of the screening or is this implied in art 5 with the notion of 'authorised manner' and thus referring to a screening and registration to EURODAC would have been already done. It would make sense that in case of first contact without prior registration we would do the screening, but not in cases where such screening has already taken place.

Article 11(2)

FI objects to the idea of adding the definition of a "serious criminal offence" to the definitions article of the ECRIS-TCN Regulation (art 11(2)). The framework of judicial cooperation in criminal matters does not include such a definition and one should not be added, as it is not added by the ETIAS related provisions. Not having a definition is a more general question in judicial cooperation and should be respected in this framework.

Article 11(3)

It seems that the use of ECRIS-TCN would be stipulated in a future proposal for a regulation. FI sees that these provisions should be in line what has been negotiated relating to the ETIAS regulation.

Other comments:

- Instead of the term national law in the text, we would prefer national legislation.

FRANCE

Article 7

Au 2ème tiret du second point de l'article 7, le compromis de la présidence supprime toute référence à la rétention.

La France demande à ce que ce paragraphe soit reformulé de la manière suivante :

«where applicable, to ensure compliance with national rules ~~on detention~~ on deprivation of liberty and other restrictive measures taken to ensure that the third country national remains at the disposal of the designated authorities»

Article 9

S'agissant de la fin du point 2 de cet articloe, la France souhaite souligner que toute personne peut signaler ces vulnérabilités dont la détection ne doit pas reposer uniquement sur le personnel médical opérant les contrôles sanitaires.

A cet effet, la délégation nous proposons l'amendement suivant :

« **Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, and collect information on possible special reception or procedural needs.** Any person involved in the screening process can report vulnerabilities to the competent authorities **».**

Article 11

S'agissant du point 3 de cet article, les autorités françaises souhaitent **signaler la difficulté qui persiste dans ce texte concernant l'accès aux données EES qui diffère entre l'article 11 du règlement screening et le nouvel article 24a (2) du règlement EES.**

Aux fins d'assurer la cohérence de l'ensemble, nous proposons la reformulation de l'article 11 §3 en ce sens :

"*As regards the consultation of EES, ETIAS and VIS pursuant to paragraph 3, ~~the retrieved data **query** shall be limited to indicating **decisions to** refusals **refuse, annul or revoke** of a travel authorisation, refusals of entry, or decisions to refuse, annul or revoke a visa or residence permit, which are based on security grounds.~~* **when conducting the security check, the competent authorities should only take into account the decisions to refuse, annul or revoke a travel authorisation, refusals of entry, or decision to refuse, annul or revoke a visa or residence permit, which are based on security grounds".**

Par ailleurs, les autorités françaises soulignent la nécessité d'harmoniser les dispositions concernant l'interrogation des bases de données d'Interpol dans les différents règlements européens liées à la gestion des ressortissants de pays tiers.

Ainsi, nous proposons les amendements suivants à pour transposer l'exigence européenne de **non-information du pays propriétaire du signalement dans la base de données d'Interpol avec lequel il a eu une correspondance lors des contrôles de sécurité, cette exigence étant présente notamment dans les deux règlements interopérabilité et le règlement ETIAS.**

En parallèle, nous proposons d'ajouter une dérogation à cette disposition, à l'instar des règlements susmentionnés, pour permettre la mise en œuvre de la procédure de pré-filtrage avant la conclusion d'un accord de coopération entre l'UE et Interpol, nécessaire pour régler les difficultés liées à la non divulgation d'une correspondance au pays propriétaire du signalement dans les bases de données d'Interpol.

"5. As regards the consultation of Interpol SLTD et TDWAN, any queries and verification shall be performed in such a way that no information shall be revealed to the owner of the Interpol alert.

6. If the implementation of paragraph 6 is not ensured, Interpol's databases shall not be queried during the security check."

Article 13

S'agissant du point 2, la France propose l'amendement ci-dessous afin de permettre d'aiguiller l'action des autorités compétentes sur le terrain et visant à faciliter le recueil des informations utiles sur les individus concernés au profit de l'ensemble des services enquêteurs :

b. information obtained on routes travelled, if possible with chronological and geographical references, including the point of departure, the places of previous residence, the third countries of transit and those where application for international protection […]

d. any relevant information, especially on its family and/or personal ties with other persons submitted to the Screening or within the Union, corroborated if applicable, by biographical data"

GERMANY

We expressly maintain our scrutiny reservation on the entire Regulation and on all proposed revisions.

To aid comprehension, we have entered the wording we proposed verbally at the meeting of the Council Working Party in the present text.

Article 7
Monitoring of fundamental rights

As already stated in our written comments on Articles 1 to 6 the Working Party on Frontiers meeting of 21 January 2021, we enter a scrutiny reservation concerning the safeguarding of an effective legal remedy under Article 47 of the EU Charter of Fundamental Rights. Effective legal remedy against the measures of the Screening Regulation which represent significant infringements of fundamental rights must be possible. This also requires looking at the procedure following screening and the debriefing form (Articles 13 and 14). Appropriate legal remedy under national law in line with Article 47 of the EU Charter of Fundamental Rights is needed if this legal remedy is not provided in other legislative acts at least indirectly. The text of the Regulation does not fully account for this.

We have added proposed wording to paragraph 2 (highlighted in yellow).

1. Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening.

2. Each Member State shall in addition to adequate legal remedies ~~establish~~ **provide for** an independent monitoring mechanism

   – to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening;

   – where applicable, to ensure compliance with national rules on ~~detention of the person concerned, in particular concerning the grounds and the duration of the detention;~~**restrictive measures taken to ensure that the third country national remains at the disposal of the designated authorities.**

We wonder whether the term “detention”, which has been deleted, should be restored in order to make clear that the monitoring mechanism applies in these cases as well.

   – to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay.

   Member States shall put in place adequate safeguards to guarantee the independence of the mechanism.

   The Fundamental Rights Agency shall issue general guidance for Member States on the setting up of such mechanism and its independent functioning. Furthermore, Member States may request the Fundamental Rights Agency to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.

~~Member States may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring.~~

We have a scrutiny reservation on this deletion and would be grateful for an explanation of the reasons for it and its consequences.

We could imagine clarification stating that the member states are free to invite these organisations to participate in the monitoring.

Article 8

Provision of information

1. Third-country nationals subject to the screening shall be succinctly informed about ~~the purpose and the modalities of the screening~~:

(a) the **purpose, elements,** ~~steps~~ and modalities of the screening as well as possible outcomes of the screening;

We welcome the provision of information and explanations concerning the screening, among other things. We have no objections to the revisions. However, the persons concerned should be sufficiently informed before screening begins, if possible. This information should include information about the national databases consulted.

(b) the rights and obligations of third country nationals during the screening, including the obligation on them to remain in the designated facilities during the screening.

2. During the screening, they shall also, as appropriate, receive information on:

Thank you for the information about the effects on the subsequent procedures if the persons concerned are not informed sufficiently or at all.

In any case, if these persons fail to meet time limits because they lacked information which should have been provided to them, this should not count against them.

(a) the applicable rules on the conditions of entry for third-country nationals in accordance with Regulation (No) 2016/399 [Schengen Border Code], as well as on other conditions of entry, stay and residence of the Member State concerned, to the extent this information has not been given already;

(b) **the applicable rules on applying** ~~where they have applied, or there are indications that they wish to apply,~~ for international protection, information on the obligation to apply for international protection in the Member State of first entry or legal stay set out in Article [9(1) and (2)] of Regulation (EU) No XXX/XXX [ex-Dublin Regulation], the consequences of non-compliance set out in Article [10(1)] of that Regulation, and the information set out in Article 11 of that Regulation as well as on the procedures that follow the making of an application for international protection;

We welcome the Presidency's clarification.

(c) the obligation for illegally staying third-country nationals to return in accordance with Directive XXXXX [Return Directive];

(d) the possibilities to enrol in a programme providing logistical, financial and other material or in-kind assistance for the purpose of supporting voluntary departure;

(e) the conditions of participation in relocation in accordance with Article XX of Regulation (EU) No XXX/XXX [ex-Dublin Regulation];

We have a scrutiny reservation concerning the reference to the AMMR. We would be grateful for an explanation of which constellation this refers to and what the person is to be informed of. What are the circumstances under which the persons concerned are to be informed about relocation?

(f) the information referred to in Article 13 of the Regulation (EU) 2016/679[1] [GDPR].

3. The information provided during the screening shall be given in a language which the third-country national understands or is reasonably supposed to understand. The information shall be given in writing and, ~~in exceptional circumstances,~~ where necessary, orally using interpretation services. It shall take into account the age and gender of the person and be provided in an appropriate manner in particular **in the case of vulnerable persons.** ~~taking into account the age and the gender of the person.~~

We welcome the addition in principle but believe that limiting it to vulnerable persons is too narrow. We also believe that the explicit reference in the original text to taking the age and gender of the person into account should be retained. We have included a suggested text above.

4. Member States may authorise relevant and competent national, international and non-governmental organisations and bodies to provide third country nationals with information under this article during the screening according to the provisions established by national law**. Such information may also be provided with the assistance of the EU agencies or based on the information developed by them, as appropriate.**

We welcome the inclusion of the agencies, as this is likely to help ensure a uniform level of information for the persons concerned. We also welcome the possibility of access for civil-society actors.

[1] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016

Article 9

Health checks and vulnerabilities

We welcome the fact that this article calls for an examination to determine vulnerabilities of the persons in question. With regard to the condition "isolation on public health grounds", we ask that this be specified to make clear that the health check is intended to identify communicable diseases.

We suggest examining whether a uniform provision exists or should be included with regard to persons such as minors, who for legal reasons cannot consent to a medical examination themselves. Effective representation must be ensured for this group as well, in particular for unaccompanied minors.

1. Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a preliminary **health check** ~~medical examination~~ with a view to identifying any needs for immediate care or isolation on public health grounds, unless, based on the circumstances concerning the general state of the individual third-country nationals concerned and the grounds for directing them to the screening, the relevant competent authorities ~~are satisfied~~ **consider** that no preliminary ~~medical~~ **health check** ~~screening~~ is necessary. ~~In that case, they shall inform those persons accordingly.~~

We have a scrutiny reservation concerning the Presidency's revisions. Please explain the insertion of the term "health checks" and the extensive exception provided for in the second half of this sentence, in particular the degree to which replacing "are satisfied" with "consider" broadens this exception.

2. Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, **and collect information on possible special reception or procedural needs** ~~victims of torture or have special reception or procedural needs within the meaning of Article 20 of the [recast] Reception Conditions Directive~~.

Please explain the difference between "vulnerabilities" and "special reception or procedural needs". We wonder whether a check of vulnerabilities would suffice.

We wonder how it will be ensured that special needs will be recognised and that personnel trained for that purpose will be available. Has the effect on the time limit for the screening been taken into account? (also affects paragraph 3)

3. Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities.

We wonder whether immediate and adequate support would be necessary, rather than simply "timely and adequate support".

~~4. Where it is deemed necessary based on the circumstances, third-country nationals submitted to the screening referred to in Article 5 shall be subject to a preliminary medical examination, notably to identify any medical condition requiring immediate care, special assistance or isolation.~~

We have a scrutiny reservation concerning the Presidency's revisions and ask for an explanation of the reasons for the deletions.

Why does the Presidency believe that such a medical examination in a member state is not necessary? How is a check to identify vulnerabilities to be ensured in a member state?

Article 10

Identification ***and verification of identity***

We enter a scrutiny reservation, among other things concerning the extent and vagueness of data queries. Which relevant databases may be consulted for which specific purpose must be sufficiently defined and transparent for the persons concerned. We also wonder why the Regulation itself does not contain any fundamental obligation of the persons concerned to cooperate with the procedure. We assume that unaccompanied minors must have effective representation.

1. To the extent it has not yet occurred during the application of Article 8 of Regulation (EU) 2016/399, the identity of third-country nationals submitted to the screening pursuant to Article 3 or Article 5 shall be verified or established, by using, **where applicable,** ~~in particular~~ the following **data**~~, in combination with national and European databases~~:

Please explain the reasons for the deletion.

(a) identity, travel or other documents;

(b) data or information provided by or obtained from the third-country national concerned; and

(c) biometric data;

We believe that the relevant data should be collected, analysed and provided to the competent authorities at the earliest possible juncture, also by means of an interview. We therefore wonder whether the possibility to use digital or technical support programs to establish identity, including a mandatory assessment of age and an examination of the authenticity of identity documents, should be explicitly added to the Regulation.

We have a scrutiny reservation concerning (b), which is very vague. Please explain what information (b) refers to, on the basis of what other legislation these data could be obtained, and whether further specification is necessary.

In general, we would be grateful for an explanation whether this includes establishing family membership, which is important for additional procedures, or whether this should be added.

2. For the purpose of the identification **and verification** ~~referred to in paragraph 1~~, the competent authorities shall querythe common identity repository (CIR) referred to in Article 17 of Regulation (EU) 2019/817, **and the Schengen Information System (SIS) using the data referred to in paragraph 1** and shall **query any relevant national databases in accordance with national law where necessary for the same purpose**. ~~The biometric data of a third-country national taken live during the screening, as well as the identity data and, where available, travel document data shall be used to that end.~~

We insist on a scrutiny reservation against expanding the querying of databases to include the SIS. We would be grateful for an explanation as to why it is necessary to query the SIS in addition to the CIR. What information does the Presidency hope to gain for identification and verification of identity by querying EU-wide alerts?

We also have a scrutiny reservation concerning the deletion: the deleted wording seems more specific than the revised wording. We believe further specification is desirable.

We have added proposed wording on the use of national databases during screening.

3. **Biometric data of a third-country national taken live shall be used for searches in the CIR.** Where the biometric data of the third-country national cannot be used or where the query with those data referred to in paragraph 2 fails **or returns no result**, the query as referred to in paragraph 2 shall be carried out with the identity data of the third-country national, in combination with any ~~identity,~~ travel or other document data**,** or with **any of** the ~~identity~~ data ~~provided by that third-country national~~ **referred to in paragraph 1(b)**.

Please explain the addition of the first sentence. Why is this provision needed?

4. Searches in the SIS with biometric data shall be carried out in accordance with Article 33 of Regulation (EU) 2018/1861 and Article 43 of Regulation (EU) 2018/1862. A search with the biometric data of the third-country national in combination with any travel or other document data or with any of the data referred to in paragraph 1(b) shall in all cases be carried out in SIS.

We insist on a scrutiny reservation against expanding the querying of databases to include the SIS. We would be grateful for an explanation of why the sequence of steps in paragraph 3 should not apply to the SIS too.

5. The checks, where possible, shall also include the verification of at least one of the biometric identifiers integrated into any identity, travel or other document.

6. This article is without prejudice to actions undertaken in line with national law with a view to establish the identity of the person concerned.

We wonder whether the reference to "national databases" in paragraph 2 could be deleted. It must be clear that the query is to be limited to the member state's own national databases. Queries of a member state's own national databases must comply with the member state's national law. The databases should only be queried if necessary. If the reference to national databases is not deleted, despite the addition of paragraph 6, we ask that the proposed text already included in paragraph 2 be included here.

Article 11

Security check

We insist on a scrutiny reservation concerning the Article and the Presidency's revisions.

1. Third country nationals submitted to the screening pursuant to Article 3 or Article 5 shall undergo a security check to verify that they do not ~~constitute~~ **pose** a threat to **public policy,** internal security **or international relations for any of the Member States**. The security check may cover both the third-country nationals and the objects in their possession. The law of the Member State concerned shall apply to any searches carried out.

We would be grateful for an explanation of the alignment with Article 6 (1) (e) of the Schengen Borders Code. Are we correct in assuming that the constellations referred to there are to be applied here as well?

2. For the purpose of conducting the security check referred to in paragraph 1, and ~~to the extent that they have not yet done so in accordance with Article 8(3), point (a)(vi), of Regulation (EU) 2016/399, the competent authorities shall query relevant national and Union databases, in particular the Schengen Information System (SIS).~~ ~~T~~ **t**o the extent it has not been already done during the checks referred to in Article 8 of Regulation (EU) 2016/399, the competent authority shall query **Union databases, in particular** the **Schengen Information System (SIS), the** Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), including the ETIAS watch list referred to in Article ~~29~~ **34** of Regulation (EU) 2018/1240, the Visa Information System (VIS), the ECRIS-TCN system as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned, the Europol data processed for the purpose referred to in Article 18(2), point (a), of Regulation (EU) 2016/794, **the Interpol Stolen and Lost travel documents database (Interpol SLTD)** ,the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) with the data referred to in Article 10(1) and using at least the data referred to under point (c) thereof and shall query relevant national databases in accordance with national law where necessary for the same purpose.

Which relevant databases may be consulted for which specific purpose must be sufficiently defined and transparent for the persons concerned. It must be clear that the query is to be limited to the member state's own national databases. Queries of a member state's own national databases must comply with the member state's national law. The databases should only be queried if necessary. Please insert the revisions above. Which constellations does the COM proposal not appear to cover?

Why is access to the complete data file for each hit provided for here? What specific information or threat assessments are to be gained from the EES, ETIAS and VIS?

~~4.~~**3.** As regards the consultation of EES, ETIAS and VIS pursuant to paragraph 3, the ~~retrieved data~~ **query** shall be limited to ~~indicating~~ **decisions to** ~~refusals~~ **refuse, annul or revoke** ~~of~~ a travel authorisation, refusals of entry, or decisions to refuse, annul or revoke a visa or residence permit, which are based on security grounds.

We assume that this is supposed to read "pursuant to paragraph 2", as it would otherwise refer to itself.

The consultation of the ETIAS watchlist pursuant to paragraph 3 shall be in accordance with Article 12(5) and Article 35a of Regulation (EU) 2018/1240.

We assume that this is supposed to read "pursuant to paragraph 2", as it would otherwise refer to itself.

[The consultation of ECRIS-TCN shall be in accordance with Regulation (EU) …/… [Regulation on the Screening consequential amendments]].

~~5.~~**4.** The Commission shall adopt implementing acts setting out the detailed procedure and specifications for retrieving data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

Article 12

Modalities for security checks

We have a scrutiny reservation concerning the Article and the Presidency's revisions.

1. The queries provided for in Article 10(2) and in Article 11(2) may be launched using, for queries related to EU information systems and the CIR, the European Search Portal in accordance with Chapter II of Regulation (EU) 2019/817 and with Chapter II of Regulation (EU) 2019/818[2]. **When the hit is obtained following a query against the SIS, the competent authority shall consult the SIRENE Bureau of the alert issuing Member State in accordance with Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862.**

Since Article 10 regards identification, we suggest that this be included also in the title of this Article

2. Where a match is obtained following a query as provided for in Article 11**(2) and** (3) against data in one of the information systems, the competent authority shall have access to consult the file corresponding to that match in the respective information system in order to determine the risk to **public policy,** internal security **or international relations pursuant to** ~~as referred to in~~ Article 11(1).

Question: Are the competent authorities to have full access to the information systems consulted? We believe it would indeed be necessary to specify to which data categories of the systems consulted the authorities will be granted access, as was done, for example, in the VIS and ETIAS consequential amendments.

[2] Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration, OJ L 135, 22.5.2019, p. 85.

3. Where a query as provided for in Article 11(3) reports a match against Europol data, the competent authority of the Member State shall inform Europol in order to take, if needed, any appropriate follow-up action in accordance with the relevant legislation.

4. Where a query as provided for in Article 11(3) reports a match against the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) **or the Interpol Stolen and Lost Documents database**, the competent authority of the Member State shall inform the Interpol National Central Bureau of the Member State that launched the query in order to take, if needed, any appropriate follow-up action in accordance with the relevant legislation.

Similar to other legal instruments that regulate the querying of Interpol databases, this regulation should also explicitly contain the instruction that any queries and verifications of Interpol databases are to be performed in such a way that no information is revealed to the owner of the Interpol alert. (See Article 12 of the ETIAS Regulation).

5. **In accordance with Article 35a of Regulation (EU) 2018/1240, in the event of a hit in the ETIAS watchlist, the ETIAS National Unit or Europol having entered the data in the ETIAS watchlist shall be automatically notified and shall provide a reasoned opinion to the competent authority performing the Screening within two days of the receipt of the notification, in case of screening pursuant to Article 5, or three days of the receipt of the notification in other cases. The absence of a reply within that deadline shall mean that there are no security risks to be taken into consideration.**

We insist on a scrutiny reservation concerning the deadlines mentioned in the Article, since the implementing act for the ETIAS watchlist is still being drafted.

6. The Commission shall adopt implementing acts to specify the procedure for cooperation between the authorities responsible for carrying out the screening, Interpol National Central Bureaux~~,~~ **and** Europol national unit~~, and ECRIS-TCN central authorities~~, respectively, to determine the risk to **public policy,** internal security **or international relations**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

We would welcome an explanation of why the procedure will be specified in an implementing act and not in the Regulation itself.

Please examine whether the term “international relations” has a different meaning here than in Article 11 (1) or (2) since the reference to the Member States is missing here, and we suggest consistent language. Otherwise we would be grateful for an explanation of this omission.
We welcome the deletion.

Article 13
~~De-briefing~~ ***Screening*** *form*

We lodge a scrutiny reservation concerning the need for the data collection.

1. On completion of the screening, the competent authorities shall, with regard to the persons referred to in Article 3 and in Article 5, complete the form in Annex I containing**, at least, the following data**:

(a) name, date and place of birth and sex;

(b) initial **and subsequent** indication of nationalities, countries of residence prior to arrival and languages spoken;

c) information on vulnerability and special reception or procedural needs identified during the screening.

We welcome the clarification and, in addition, ask that a reference to special needs be added to letter c).

We have added proposed language to this effect to the text above (highlighted in yellow).

2. Where available, the following data should be included:

(~~c~~**a**) reason for unauthorised arrival, entry, and, where appropriate illegal stay or residence, including information on whether the person made an application for international protection;

Here, we would welcome clarification that also all SAR cases of migrants or refugees will fall under this provision.

(~~d~~**b**) information obtained on routes travelled, including the point of departure, the places of previous residence, the third countries of transit and those where **application for international** protection may have been **made** ~~sought~~ or granted as well as the intended destination within the Union **and presence and validity of travel documents**;

(~~e~~**c**) information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling.

We welcome the announcement made in the Council Working Party that the word "criminal" is to be deleted, since this as a rule can only be determined in the course of criminal proceedings and the definition of this term could vary.

(d) Any other relevant information.

Adding to our question on Article 10, we would like to ask for clarification of how this relates to the envisaged procedure for determining the responsible Member State (in the AMMR), and to what extent it is already envisaged during the screening procedure to collect information relevant for this (e.g. connection to a specific Member State).

Article 14

Outcome of the screening

We lodge a scrutiny reservation concerning the provisions of this Article. Articles 13 and 14 contain important decisions and consequences for the third country nationals in question. We therefore refer to our comments on Article 7 regarding legal remedy.

1. The third country nationals referred to in Article 3(1) point (a) and (b) of this Regulation who

   – have not **made an application** ~~applied~~ for international protection ~~and~~

   ~~– with regard to whom the screening has not revealed that they fulfil entry conditions set out in Article 6 of Regulation (EU) 2016/399,~~

   shall be referred to the competent authorities to apply procedures respecting Directive (EU) 2008/115/EC (Return Directive).

   In cases not related to search and rescue operations, entry may be refused in accordance with Article 14 of Regulation 2016/399.

   The form referred to in Article 13 shall be transmitted to the relevant authorities to whom the third country national is being referred.

We ask for clarification of the reasons and consequences of deleting the second indent.

Apart from this, the reference to Article 3 (1) (a) and (b) is pointless, because following the changes applied by the Presidency, letters (a) and (b) no longer exist.

2. Third-country nationals who made an application for international protection shall be referred to the authorities referred to in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation], together with the form referred to in Article 13 of this Regulation. ~~On that occasion, the authorities conducting the screening shall point in the de-briefing form to any elements which seem at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure.~~

   We ask for an explanation for the deletion. Does the deletion impact the transmission of relevant information to the competent authority?

3. Where the third country national is to be relocated under the mechanism for solidarity established by Article XX of Regulation (EU) No XXXX/XXXX [Dublin Regulation], the third-country national concerned shall be referred to the relevant authorities of the Member States concerned together with the form referred to in Article 13.

   We lodge a scrutiny reservation because of the reference to the AMMR. We have not yet finished our examination regarding the reference to the AMMR and would therefore be grateful for clarification concerning which constellation could be affected. Does this refer to SAR cases of migrants and refugees? Should this also cover constellations where a person has applied for asylum, but as an asylum applicant also qualifies for relocation? Why does the text for this case not explicitly provide for this person to be referred to the authority responsible for asylum procedures (see Article 14 (2)).?

4. The third-country nationals referred to in Article 5, who

– have not applied for international protection ~~and~~

~~– with regard to whom the screening has not revealed that they fulfil the conditions for entry and stay~~

shall be subject to return procedures respecting Directive 2008/115/EC.

We enter a scrutiny reservation regarding this paragraph. We ask for clarification of the reasons and consequences of the deletion.

5. Where third-country nationals submitted to the screening in accordance with Article 5 make an application for international protection as referred to in Article 25 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation), paragraph 2 of this Article shall apply accordingly.

6. In respect of third-country nationals to whom Regulation EU No XXX/XXX [Eurodac Regulation] applies, the competent authorities shall take the biometric data referred to in Articles [10, 13, 14 and 14a] of that Regulation (EU) and shall transmit it in accordance with that Regulation.

To avoid the impression that this Regulation is the legal basis for capturing biometric data, we suggest clarification to the effect that the EURODAC Regulation is the only legal basis for collecting biometric data.

7. Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum**, refusal of entry** or return, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure. **Where necessary, the checks set forth under this Regulation may continue within the subsequent procedure.**

We insist on a scrutiny reservation regarding this change.

Article 15

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. **Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act, and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**

In principle we welcome the addition made by the Presidency. However, there is still a need for scrutiny regarding the details.

Article 16

Amendments to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is amended as follows:

(1) in Article 6, paragraph 2 is replaced by the following:

"(2) Access to the VIS for consulting the data shall be reserved exclusively for the duly authorised staff of:

(a) the national authorities of each Member State and of the EU bodies which are competent for the purposes laid down in Articles 15 to 22, Articles 22g to 22m, and Article 45e;

(b) the ETIAS Central Unit and the ETIAS National Units, designated pursuant to Articles 7 and 8 of Regulation (EU) 2018/1240, for the purposes laid down in Articles 18c and 18d of this Regulation and in Regulation (EU) 2018/1240;

(c) the ~~competent~~ **screening** authorities, designated pursuant to Article 6**(7)** of Regulation (EU) 2020/XXX [screening regulation], for the purposes laid down in Articles 10 to 12 of that Regulation;

(d) the national authorities of each Member State and of the Union bodies which are competent for the purposes laid down in Articles 20 and 21 of Regulation (EU) 2019/817.

That access shall be limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued."

In line with our comments on Article 11, the regulations pertaining to the databases to be queried should state explicitly to which specific data the query is limited.

Article 17

Amendments to Regulation (EU) 2017/2226

Regulation (EU) 2017/2226 is amended as follows:

(1) in Article 6(1), the following point (k) is inserted after point (j):

"(k) support the objectives of the screening established by Regulation (EU) 2020/XXX of the European Parliament and of the Council3, in particular for the checks provided under Article 10 thereof."

We ask that the relevant Articles 10 to 12 be explicitly referred to, as in the proposed amendments to the VIS Regulation. This would also be in line with the newly proposed Article 24a of the EES Regulation below.

[3] See footnote of the proposal

(2) Article 9 is amended as follows:

(a) the following paragraph 2a is inserted after paragraph 2:

"2a. The competent screening authorities referred to in Article 6(7) of Regulation (EU) 2020/XXX shall have access to the EES to consult data.";

(b) paragraph 4 is replaced by the following:

"(4) Access to the EES data stored in the CIR shall be reserved exclusively for the duly authorised staff of the national authorities of each Member State and for the duly authorised staff of the Union agencies that are competent for the purposes laid down in Article 20, Article 20a and Article 21 of Regulations (EU) 2019/817 and 2019/818. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued."

(3) the following Article 24a is inserted after Article 24:

"Article 24a

Access to data for the identification and for the security check for the purposes of screening

1. For the purposes of verifying or establishing the identity of a person pursuant to Article 10 of Regulation (EU) XXX/YYYY (Screening) and the carrying out of security checks pursuant to Articles 11 and 12 of that Regulation, competent the screening authorities referred to in Article 6(7) of that same Regulation shall have access to EES data to the extent necessary to be able to carry out searches using the data referred to in Article 10(1) of Regulation (EU) XXX/YYYY (Screening) against the data stored in the EES in accordance with points (a) to (d) of Article 16(1) and points (a) to (c) of Article 17(1) of this Regulation.

2. If the search carried out pursuant to paragraph 1 indicates that data on the person are stored in the EES, the competent authority referred in paragraph 1 shall be given access to the data of the individual file, the entry/exit records and refusal of entry records linked to it.

If the individual file referred to in the first subparagraph does not include any biometric data, the competent authorities may proceed to access the biometric data of that person and verify correspondence in VIS in accordance with Article 6 of Regulation (EC) No 767/2008."

We would like to know why access to the whole file should be required?

(4) in Article 46(1), point (a) is replaced by the following:

"(a) The purpose of the access referred to in Article 9 and Article 9(2a)."

Article 18

Amendments to Regulation (EU) 2018/1240

Regulation (EU) 2018/1240 is amended as follows:

(1) in Article 4, point (a) is replaced by the following:

"(a) contribute to a high level of security by providing for a thorough security risk assessment of applicants, prior to their arrival at external border crossing points, and of persons subject to the screening referred to in Regulation (EU) 2020/XXX [Screening Regulation], in order to determine whether there are factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a security risk;"

(2) In paragraph 2 of Article 8 a new point (h) is added:

(h) providing opinions in accordance with Article 35a.

(3) Article 13 is amended as follows:

(a) the following paragraph 4b is inserted after paragraph 4a:

"4b. For the purposes of Articles 10 to 12 of Regulation (EU) XXX/YYYY (Screening), competent authorities referred to in Article 6(7) of that Regulation, shall have access to the data in the ETIAS Central System to the extent necessary to be able to carry out searches using the data referred to in Article 10(1)(a) and (b) of that Regulation against the data contained in the ETIAS Information System.

If the search carried out pursuant to paragraph 1 reveals a match, the competent authorities shall have 'read-only' access, to the ETIAS applications files stored in the ETIAS Central system.

If the search carried out pursuant to paragraph 1 indicates that there is a correspondence between the data used for the search and the data recorded in the ETIAS watchlist referred to in Article 34, the ETIAS National Unit or Europol having entered the data in the watchlist shall be notified in accordance with Article 35a of this Regulation."

(b) paragraph 5 is replaced by the following:

"5. Each Member State shall designate the competent national authorities referred to in paragraphs 1, 2, 4 and 4a of this Article, and the ~~competent~~ **screening** authority referred to in Article 6(7) of Regulation (EU) 2020/XXX, and shall communicate a list of those authorities to eu-LISA without delay, in accordance with Article 87(2) of this Regulation. That list shall specify for which purpose the duly authorised staff of each authority shall have access to the data in the ETIAS Information System in accordance with paragraphs 1, 2, 4 and 4a of this Article."

(3) the following Article 35a is inserted after Article 35:

"*Article 35a*

Tasks of the ETIAS National Unit and Europol regarding the ETIAS watchlist for the purpose of the screening procedure

1. In cases referred to in the third paragraph of Article 13(4b), the ETIAS Central System shall send an automated notification to the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist.
2. Within ~~4~~ **3** days of the receipt of the notification, the ETIAS National Unit(s) or Europol shall provide a reasoned opinion to the Member State performing the Screening, as to whether the third country national undergoing the Screening poses a security threat. **If no opinion is provided, it should be considered that there is no security threat.**
3. ~~The reasoned opinion shall be provided through a secure notification mechanism to be set up by eu-LISA between the ETIAS National Units and Europol on the one part, and the competent authorities (of the Screening) on the other.~~

   In case the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist consider the third country national undergoing the Screening poses a security threat, it can inform the competent authorities in any appropriate manner.

Here, the original wording of the COM proposal seems preferable to us.

4. The automated notification(s) referred to in paragraph 1 shall contain the data referred to in Article 10(1) of Regulation (EU) xxxx/yyyy (Screening) used for the query."

(4) in Article 69(1), the following point (ea) is inserted after point (e):

"(ea) where relevant, a reference to queries entered in the ETIAS Central System for the purposes of Articles 10 and 11 Regulation (EU) XXX/YYYY (Screening), the hits triggered and the results of this query."

Article 19

Amendments to Regulation (EU) 2019/817

Regulation (EU) 2019/817 is amended as follows:

(1) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

"A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a of this Regulation, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22."

(b) paragraph 4 is replaced by the following:

"Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for verifying or establishing the identity of a person pursuant to Article 20a of this Regulation, for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner."

(2) the following Article 20a is inserted after article 20:

"Article 20a

Access to the common identity repository for identification according to Regulation (EU) 2020/XXX

1. Queries of the CIR shall be carried out by the designated competent authority as referred to in Article 6(7) of Regulation (EU) yyyy/XXX (Screening), solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.
2. Where the query indicates that data on that person are stored in the CIR, the competent authority shall have access to consult the data referred to in Article 18(1) of this Regulation as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/818 of the European Parliament and the Council."

(3) in Article 24, ~~the following paragraph 2a is inserted after paragraph 2:~~

(a) Paragraph 1 is replaced by the following:

'1. Without prejudice to Article 29 of Regulation (EU) 2019/816, eu-LISA shall keep logs of all data processing operations in the CIR in accordance with paragraphs 2, 2a, 3 and 4 of this Article.'

(b) the following paragraph 2a is inserted after paragraph 2:

"2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:

(a) the Member State launching the query;

(b) the purpose of access of the user querying via the CIR;

(c) the date and time of the query;

(d) the type of data used to launch the query;

(e) the results of the query."

Article 19a

Amendments to Regulation (EU) 2019/818

Regulation (EU) 2019/818 is amended as follows:

(1) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

"A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a of this Regulation, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22."

(b) paragraph 4 is replaced by the following:

" Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for verifying or establishing the identity of a person pursuant to Article 20a of this Regulation for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner.

(2) the following Article 20a is inserted after Article 20:

"*Article 20a*

Access to the common identity repository for identification according to Regulation (EU) 2020/XXX

1) Queries of the CIR shall be carried out by the designated competent authority as referred to in Article 6(7) of Regulation (EU) YYYY/XXXX (Screening), solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.

2. Where the query indicates that data on that person are stored in the CIR, the competent authority shall have access to consult the data referred to in Article18(1) of this Regulation as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/817 of the European Parliament and the Council."

~~(3) in Article 24, the following paragraph 2a is inserted after paragraph 2:~~

~~"2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:~~

~~(a) the Member State launching the query;~~

~~(b) the purpose of access of the user querying via the CIR;~~

~~(c) the date and time of the query;~~

~~(d) the type of data used to launch the query;~~

~~(e) the results of the query."~~

Please explain why Article 19 has been deleted.

Article 20

evaluation

[Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.]

No sooner than [five] years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report~~, at the latest six months before the [five] years' time limit expires~~.

Article 21

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall start to apply 6 months from its entry into force.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

In light of possibly necessary preparatory measures we welcome the insertion of a provision specifying when the Regulation starts to apply. Regarding the details, however, there is still need for scrutiny concerning the proposed 6-month period.

GREECE

The following comments are without prejudice to our substantive reservation.

Article 7- Monitoring of fundamental rights

We recognize the Portuguese Presidency's efforts to discharge the MSs from the obligation to establish new monitor mechanism for fundamental rights but we still have our reservations. We are of the opinion that such obligation already derives from European legislation. Therefore, there is absolutely no need to repeat such provisions in this Regulation.

Moreover, we want to highlight that article 110 of Regulation 1896/2019 (Frontex Regulation) provides for fundamental rights monitors who shall constantly assess the fundamental rights compliance of operational activities.

Last but not least, since this legislation is presenting a phase (not a procedure) with no obligations from the part of the third country nationals screened and with no decision to be taken, the proposed provisions add no value.

In conclusion we propose the article to be deleted.

Article 8- Provision of Information

We have scrutiny reservations.

(3) Regarding the phrase "in exceptional circumstances, where necessary, orally using interpretation services", we note the following. Assuming the third country nationals are not able to read the information provided to them in written form (whether because of illiteracy or vision problems), it is practically impossible to offer oral interpretation in all languages potentially needed. Given that there cannot be interpreters of all languages at all borders at all times, perhaps a pre-recorded message or a live connection via an on-line platform could be used.

Article 9- Health checks and vulnerabilities

We have reservations on substance.

(1) It would be very important to specify who the "competent authorities" are, meaning who is responsible for deciding whether the third country nationals who have entered the borders need to go through preliminary medical screening or not. Even more importantly, based on which criteria would this decision be made? (e.g. should we be looking for physical signs that the person is unwell, or is it enough for the person to state they are unwell?)

Article 10 – Identification and verification of identity

The article should enshrine the obligation of third country nationals to cooperate with the designated authorities and provide all necessary information, in order for the identification to be carried out properly.

It is of essential need to add provisions for obligations form the side of third country nationals.

Article 13 – ~~De-briefing~~ Screening form

Since there is a new provision added in article 14 (7) *Where necessary, the checks set forth under this Regulation may continue within the subsequent procedure.* and since those checks are the fundamental core of the screening process, it is rather contradictory to refer to mandatory data, which derive from the aformentioned checks, when there is strong possibility not to conclude them. This form is considered as a "paper" where specific information is gathered, in order to help the competent authorities for the next steps. It does not raise any other legal results and certainly does not establish the identity of the third country nationals.

Concerns have been raised, during the discussions, for cases where the identity may not be established and proposals have been made for general identifiers.

Therefore, we believe that the information needed for this form is strongly connected to the checks that fall under the screening. And since those checks may not be able to be completed within the deadlines and the mandatory data may not be able to be gathered. Therefore, flexibility should be given to the competent authorities as regards the completion of this form.

To that scope we propose that the article should be introduced as follows:

1. On completion of the screening **and without prejudice to the outcome of the checks referred to in articles 9 and 10**, the competent authorities shall complete **a** ~~the~~ form ~~in Annex I~~ containing the following data,

Furthermore the term **vulnerability** should be clearly defined in the text, in relation to the checks referred to in article 9.

Last but not least, the form should not have a specific structure and the MSs should have the possibility to use existing systems in order to gather and disseminate the information.

Article 21- Entry into force

Despite the fact that this Regulation is presented as a complementary text to existing border checks, it nevertheless introducing added burden, especially to front line MSs. Therefore a transitional period is of outmost importance. We are in favor of a **two-year** transitional period.

HUNGARY

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 7

Monitoring of fundamental rights

1. Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening.

2. Each Member State shall ~~establish~~ **provide for** an independent monitoring mechanism

   ~~– to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening;~~

   ~~– where applicable, to ensure compliance with national rules on detention of the person concerned, in particular concerning the grounds and the duration of the detention;~~**~~restrictive measures taken to ensure that the third country national remains at the disposal of the designated authorities.~~**

   ~~– to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay.~~

   ~~Member States shall put in place adequate safeguards to guarantee the independence of the mechanism.~~

   ~~The Fundamental Rights Agency shall issue general guidance for Member States on the setting up of such mechanism and its independent functioning. Furthermore, Member States may request the Fundamental Rights Agency to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.~~

   ~~Member States may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring.~~

HU comments:

This issue is a red-line for Hungary we would still like to ask for the deletion of the whole Article as the MSs have an obligation under the Treaties to set up a monitoring and complaint system for violations of fundamental rights in connection with measures regarding deprivation of liberty. We would also like to highlight the fact, that the screening is not considered as a separate procedure, no decision would be issued at the end of the screening, and the screening will be followed by a further procedural step, during which the MS must ensure the appropriate legal remedy or complaint regarding the decision made.

The only compromise we are ready to accept is to use a solution similar to the Return Directive (article 8(6)): "Each Member State shall provide for an independent monitoring mechanism".

Article 8

Provision of information

1. Third-country nationals subject to the screening shall be succinctly informed about ~~the purpose and the modalities of the screening~~:

   (a) the **purpose, elements,** ~~steps~~ and modalities of the screening as well as possible outcomes of the screening;

   (b) the rights and obligations of third country nationals during the screening, including the obligation on them to remain in the designated facilities during the screening.

2. During the screening, they shall also, as appropriate, receive information on:

   (a) the applicable rules on the conditions of entry for third-country nationals in accordance with Regulation (No) 2016/399 [Schengen Border Code], as well as on other conditions of entry, stay and residence of the Member State concerned, to the extent this information has not been given already;

   (b) **the applicable rules on applying** ~~where they have applied, or there are indications that they wish to apply,~~ for international protection, information on the obligation to apply for international protection in the Member State of first entry or legal stay set out in Article [9(1) and (2)] of Regulation (EU) No XXX/XXX [ex-Dublin Regulation], the consequences of non-compliance set out in Article [10(1)] of that Regulation, and the information set out in Article 11 of that Regulation as well as on the procedures that follow the making of an application for international protection;

   (c) the obligation for illegally staying third-country nationals to return in accordance with Directive XXXXX [Return Directive];

   (d) the possibilities to enrol in a programme providing logistical, financial and other material or in-kind assistance for the purpose of supporting voluntary departure;

   (e) ~~the conditions of participation in relocation in accordance with Article XX of Regulation (EU) No XXX/XXX [ex-Dublin Regulation];~~

(f) the information referred to in Article 13 of the Regulation (EU) 2016/679[4] [GDPR].

3. The information provided during the screening shall be given in a language which the third-country national understands or is reasonably supposed to understand. The information shall be given in writing and, ~~in exceptional circumstances,~~ where necessary, orally using interpretation services. It shall be provided in an appropriate manner **in the case of vulnerable persons.** ~~taking into account the age and the gender of the person.~~

4. Member States may authorise relevant and competent national, international and non-governmental organisations and bodies to provide third country nationals with information under this article during the screening according to the provisions established by national law**. Such information may also be provided with the assistance of the EU agencies or based on the information developed by them, as appropriate.**

HU comments

We think that this Article or the text of the regulation should impose a detailed obligation on the person subject to screening to cooperate during the identification process. It shall also be specified in the text what rights and obligations the person subject to screening has, as well as which are the consequences in case the person concerned refuses or withdraws from the screening obligation.

We suggest to delete the obligation to provide information on the conditions of participation in relocation, as this would only cause a pull factor (even if relocation is carried out on a voluntary basis). We would like to reiterate, that although the text states that the Member States may authorise non-governmental organisations to provide third country nationals with information, we are still convinced that these activities could result in the abuse of the national systems and pose security risks.

Furthermore, we suggest introducing a uniformed information form for all the member states prepared and adopted within a comitology procedure.

Article 9

Health checks and vulnerabilities

1. Third-country nationals submitted to the screening referred to in Article 3 **and 5** shall be subject to a preliminary **health check** ~~medical examination~~ with a view to identifying any needs for immediate care or isolation on public health grounds, unless, based on the circumstances concerning the general state of the individual third-country nationals concerned and the grounds for directing them to the screening, the relevant competent authorities ~~are satisfied~~ **consider** that no preliminary ~~medical~~ **health check** ~~screening~~ is necessary. ~~In that case, they shall inform those persons accordingly.~~ **Where it is deemed necessary based on the preliminary examination, third-country nationals submitted to the screening referred to in Article 3 and 5 shall be subject to a medical examination.**

[4] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016

2. Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, **and collect information on possible special reception or procedural needs** ~~victims of torture or have special reception or procedural needs within the meaning of Article 20 of the [recast] Reception Conditions Directive~~.

3. Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities.

~~4. Where it is deemed necessary based on the circumstances, third-country nationals submitted to the screening referred to in Article 5 shall be subject to a preliminary medical examination, notably to identify any medical condition requiring immediate care, special assistance or isolation.~~

HU comments:

We think that a crutial elements of this article should be a reference to the fact that the identification of the vulnerable groups should be carried out in the framework of the screening, as the result of such an examination determines the procedure to be carried out after the screening. In this context we consider as absolutely necessary to carry out the age determination process already during the course of the screening.

Article 10

*Identification **and verification of identity***

1. To the extent it has not yet occurred during the application of Article 8 of Regulation (EU) 2016/399, the identity of third-country nationals submitted to the screening pursuant to Article 3 or Article 5 shall be verified or established, by using, **where applicable,** ~~in particular~~ the following **data**~~, in combination with national and European databases~~:

   (a) identity, travel or other documents;

   (b) data or information provided by or obtained from the third-country national concerned; and

   (c) biometric data;

2. For the purpose of the identification **and verification** ~~referred to in paragraph 1~~, the competent authorities shall query any relevant national databases as well as the common identity repository (CIR) referred to in Article 17 of Regulation (EU) 2019/817, **and the Schengen Information System (SIS) using the data referred to in paragraph 1**. ~~The biometric data of a third-country national taken live during the screening, as well as the identity data and, where available, travel document data shall be used to that end.~~

3. **Biometric data of a third-country national taken live shall be used for searches in the CIR.** Where the biometric data of the third-country national cannot be used or where the query with those data referred to in paragraph 2 fails **or returns no result**, the query as referred to in paragraph 2 shall be carried out with the identity data of the third-country national, in combination with any ~~identity,~~ travel or other document data**,** or with **any of** the ~~identity~~ data ~~provided by that third-country national~~ **referred to in paragraph 1(b)**.

4. **Searches in the SIS with biometric data shall be carried out in accordance with Article 33 of Regulation (EU) 2018/1861 and Article 43 of Regulation (EU) 2018/1862. A search with the biometric data of the third-country national in combination with any travel or other document data or with any of the data referred to in paragraph 1(b) shall in all cases be carried out in SIS.**

5. The checks, where possible, shall also include the verification of at least one of the biometric identifiers integrated into any identity, travel or other document.

6. **This article is without prejudice to actions undertaken in line with national law with a view to establish the identity of the person concerned.**

Article 11

Security check

1. Third country nationals submitted to the screening pursuant to Article 3 or Article 5 shall undergo a security check to verify that they do not ~~constitute~~ **pose** a threat to **public policy,** internal security **or international relations for any of the Member States**. The security check may cover both the third-country nationals and the objects in their possession. The law of the Member State concerned shall apply to any searches carried out.

2. For the purpose of conducting the security check referred to in paragraph 1, and ~~to the extent that they have not yet done so in accordance with Article 8(3), point (a)(vi), of Regulation (EU) 2016/399, the competent authorities shall query relevant national and Union databases, in particular the Schengen Information System (SIS).~~ ~~T~~ **t**o the extent it has not been already done during the checks referred to in Article 8 of Regulation (EU) 2016/399, the competent authority shall query **relevant national and Union databases, in particular** the **Schengen Information System (SIS), the** Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), including the ETIAS watch list referred to in Article ~~29~~ **34** of Regulation (EU) 2018/1240, the Visa Information System (VIS), the ECRIS-TCN system as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned, the Europol data processed for the purpose referred to in Article 18(2), point (a), of Regulation (EU) 2016/794, **the Interpol Stolen and Lost travel documents database (Interpol SLTD)** and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) with the data referred to in Article 10(1) and using at least the data referred to under point (c) thereof.

~~4.~~**3.** As regards the consultation of EES, ETIAS and VIS pursuant to paragraph 3, the ~~retrieved data~~ **query** shall be limited to ~~indicating~~ **decisions to** ~~refusals~~ **refuse, annul or revoke** ~~of~~ a travel authorisation, refusals of entry, or decisions to refuse, annul or revoke a visa or residence permit, which are based on security grounds.

The consultation of the ETIAS watchlist pursuant to paragraph 3 shall be in accordance with Article 12(5) and Article 35a of Regulation (EU) 2018/1240.

[The consultation of ECRIS-TCN shall be in accordance with Regulation (EU) …/… [Regulation on the Screening consequential amendments]].

~~5.~~**4.** The Commission shall adopt implementing acts setting out the detailed procedure and specifications for retrieving data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

Article 12

Modalities for security checks

1. The queries provided for in Article 10(2) and in Article 11(2) may be launched using, for queries related to EU information systems and the CIR, the European Search Portal in accordance with Chapter II of Regulation (EU) 2019/817 and with Chapter II of Regulation (EU) 2019/818[5]. **When the hit is obtained following a query against the SIS, the competent authority shall consult the SIRENE Bureau of the alert issuing Member State in accordance with Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862.**

2. Where a match is obtained following a query as provided for in Article 11**(2) and** (3) against data in one of the information systems, the competent authority shall have access to consult the file corresponding to that match in the respective information system in order to determine the risk to **public policy,** internal security **or international relations pursuant to** ~~as referred to in~~ Article 11(1).

3. Where a query as provided for in Article 11(3) reports a match against Europol data, the competent authority of the Member State shall inform Europol in order to take, if needed, any appropriate follow-up action in accordance with the relevant legislation.

4. Where a query as provided for in Article 11(3) reports a match against the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) **or the Interpol Stolen and Lost Documents database**, the competent authority of the Member State shall inform the Interpol National Central Bureau of the Member State that launched the query in order to take, if needed, any appropriate follow-up action in accordance with the relevant legislation.

5. **In accordance with Article 35a of Regulation (EU) 2018/1240, in the event of a hit in the ETIAS watchlist, the ETIAS National Unit or Europol having entered the data in the ETIAS watchlist shall be automatically notified and shall provide a reasoned opinion to the competent authority performing the Screening within two days of the receipt of the notification, in case of screening pursuant to Article 5, or three days of the receipt of the notification in other cases. The absence of a reply within that deadline shall mean that there are no security risks to be taken into consideration.**

6. The Commission shall adopt implementing acts to specify the procedure for cooperation between the authorities responsible for carrying out the screening, Interpol National Central Bureaux~~,~~ **and** Europol national unit~~, and ECRIS-TCN central authorities~~, respectively, to determine the risk to **public policy,** internal security **or international relations**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

[5] Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration, OJ L 135, 22.5.2019, p. 85.

Article 13

~~De-briefing~~ ***Screening*** *form*

1. On completion of the screening, the competent authorities shall, with regard to the persons referred to in Article 3 and in Article 5, complete the form in Annex I containing**, at least, the following data**:

(a) name, date and place of birth and sex;

(b) initial **and subsequent** indication of nationalities, countries of residence prior to arrival and languages spoken;

c) information on vulnerability identified during the screening.

2. Where available, the following data should be included:

(~~c~~**a**) reason for unauthorised arrival, entry, and, where appropriate illegal stay or residence, including information on whether the person made an application for international protection;

(~~d~~**b**) information obtained on routes travelled, including the point of departure, the places of previous residence, the third countries of transit and those where **application for international** protection may have been **made** ~~sought~~ or granted as well as the intended destination within the Union **and presence and validity of travel documents**;

(~~e~~**c**) information on assistance provided by a person or a**n** ~~criminal~~ organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling.

(d) Any other relevant information.

Article 14

Outcome of the screening

1. The third country nationals referred to in Article 3(1) point (a) and (b) of this Regulation who

– have not **made an application** ~~applied~~ for international protection ~~and~~

~~– with regard to whom the screening has not revealed that they fulfil entry conditions set out in Article 6 of Regulation (EU) 2016/399,~~

shall be referred to the competent authorities to apply procedures respecting Directive (EU) 2008/115/EC (Return Directive)**,** ~~.~~ **unless the Member State concerned decided not to apply Directive (EU) 2008/115/EC (Return Directive) to third-country nationals in accordance with Article 2 (2) point (a) of Directive (EU) 2008/115/EC (Return Directive).**

In cases not related to search and rescue operations, entry may be refused in accordance with Article 14 of Regulation 2016/399.

The form referred to in Article 13 shall be transmitted to the relevant authorities to whom the third country national is being referred.

2. Third-country nationals who made an application for international protection shall be referred to the authorities referred to in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation], together with the form referred to in Article 13 of this Regulation. ~~On that occasion, the authorities conducting the screening shall point in the de-briefing form to any elements which seem at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure.~~

3. **[**Where the third country national is to be relocated under the mechanism for solidarity established by Article XX of Regulation (EU) No XXXX/XXXX [Dublin Regulation], the third-country national concerned shall be referred to the relevant authorities of the Member States concerned together with the form referred to in Article 13.**]**

4. The third-country nationals referred to in Article 5, who

   – have not applied for international protection ~~and~~

   ~~– with regard to whom the screening has not revealed that they fulfil the conditions for entry and stay~~

   shall be subject to return procedures respecting Directive 2008/115/EC.

5. Where third-country nationals submitted to the screening in accordance with Article 5 make an application for international protection as referred to in Article 25 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation), paragraph 2 of this Article shall apply accordingly.

6. In respect of third-country nationals to whom Regulation EU No XXX/XXX [Eurodac Regulation] applies, the competent authorities shall take the biometric data referred to in Articles [10, 13, 14 and 14a] of that Regulation (EU) and shall transmit it in accordance with that Regulation.

7. Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum**, refusal of entry** or return, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure. **Where necessary, the checks set forth under this Regulation may continue within the subsequent procedure.**

HU comments:

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.

Furthermore we would like to avoid treating those persons who crossed illegally the border in a similar period of time but continued their jurney by other means (e.g.: by foot or by a vehicle with the help of a facilitator), as this could cause a higher demand for the services of human smugglers.

In this regard we suggest to find a possible compromise solution and to enable in certain cases to use the fiction of non-entry to persons apprehended within the territory of the Member States as well as within a certan timeframe and regarding these persons we should also have the possibility to apply the procedure in accordance with Article 14 of the Schengen Borders Code.

Finally we suggest to put the provisions of Paragraph 3 in square brackets and to postpone the debate on this as the whole paragraph is interlinked with the negotiations on other legislative proposals.

Article 15

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. **Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act, and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**

Article 16

Amendments to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is amended as follows:

(2) in Article 6, paragraph 2 is replaced by the following:

"(2) Access to the VIS for consulting the data shall be reserved exclusively for the duly authorised staff of:

(e) the national authorities of each Member State and of the EU bodies which are competent for the purposes laid down in Articles 15 to 22, Articles 22g to 22m, and Article 45e;

(f) the ETIAS Central Unit and the ETIAS National Units, designated pursuant to Articles 7 and 8 of Regulation (EU) 2018/1240, for the purposes laid down in Articles 18c and 18d of this Regulation and in Regulation (EU) 2018/1240;

(g) the ~~competent~~ **screening** authorities, designated pursuant to Article 6**(7)** of Regulation (EU) 2020/XXX [screening regulation], for the purposes laid down in Articles 10 to 12 of that Regulation;

(h) the national authorities of each Member State and of the Union bodies which are competent for the purposes laid down in Articles 20 and 21 of Regulation (EU) 2019/817.

That access shall be limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued."

Article 17

Amendments to Regulation (EU) 2017/2226

Regulation (EU) 2017/2226 is amended as follows:

(4) in Article 6(1), the following point (k) is inserted after point (j):

"(k) support the objectives of the screening established by Regulation (EU) 2020/XXX of the European Parliament and of the Council6, in particular for the checks provided under Article 10 thereof."

(5) Article 9 is amended as follows:

(c) the following paragraph 2a is inserted after paragraph 2:

"2a. The competent screening authorities referred to in Article 6(7) of Regulation (EU) 2020/XXX shall have access to the EES to consult data.";

(d) paragraph 4 is replaced by the following:

"(4) Access to the EES data stored in the CIR shall be reserved exclusively for the duly authorised staff of the national authorities of each Member State and for the duly authorised staff of the Union agencies that are competent for the purposes laid down in Article 20, Article 20a and Article 21 of Regulations (EU) 2019/817 and 2019/818. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued."

(6) the following Article 24a is inserted after Article 24:

"Article 24a

Access to data for the identification and for the security check for the purposes of screening

3. For the purposes of verifying or establishing the identity of a person pursuant to Article 10 of Regulation (EU) XXX/YYYY (Screening) and the carrying out of security checks pursuant to Articles 11 and 12 of that Regulation, competent the screening authorities referred to in Article 6(7) of that same Regulation shall have access to EES data to the extent necessary to be able to carry out searches using the data referred to in Article 10(1) of Regulation (EU) XXX/YYYY (Screening) against the data stored in the EES in accordance with points (a) to (d) of Article 16(1) and points (a) to (c) of Article 17(1) of this Regulation.

6 See footnote of the proposal

4. If the search carried out pursuant to paragraph 1 indicates that data on the person are stored in the EES, the competent authority referred in paragraph 1 shall be given access to the data of the individual file, the entry/exit records and refusal of entry records linked to it.

   If the individual file referred to in the first subparagraph does not include any biometric data, the competent authorities may proceed to access the biometric data of that person and verify correspondence in VIS in accordance with Article 6 of Regulation (EC) No 767/2008."

(4) in Article 46(1), point (a) is replaced by the following:

"(a) The purpose of the access referred to in Article 9 and Article 9(2a)."

Article 18

Amendments to Regulation (EU) 2018/1240

Regulation (EU) 2018/1240 is amended as follows:

(4) in Article 4, point (a) is replaced by the following:

"(a) contribute to a high level of security by providing for a thorough security risk assessment of applicants, prior to their arrival at external border crossing points, and of persons subject to the screening referred to in Regulation (EU) 2020/XXX [Screening Regulation], in order to determine whether there are factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a security risk;"

(5) In paragraph 2 of Article 8 a new point (h) is added:

(h) providing opinions in accordance with Article 35a.

(6) Article 13 is amended as follows:

(c) the following paragraph 4b is inserted after paragraph 4a:

"4b. For the purposes of Articles 10 to 12 of Regulation (EU) XXX/YYYY (Screening), competent authorities referred to in Article 6(7) of that Regulation, shall have access to the data in the ETIAS Central System to the extent necessary to be able to carry out searches using the data referred to in Article 10(1)(a) and (b) of that Regulation against the data contained in the ETIAS Information System.

If the search carried out pursuant to paragraph 1 reveals a match, the competent authorities shall have 'read-only' access, to the ETIAS applications files stored in the ETIAS Central system.

If the search carried out pursuant to paragraph 1 indicates that there is a correspondence between the data used for the search and the data recorded in the ETIAS watchlist referred to in Article 34, the ETIAS National Unit or Europol having entered the data in the watchlist shall be notified in accordance with Article 35a of this Regulation."

(d) paragraph 5 is replaced by the following:

"5. Each Member State shall designate the competent national authorities referred to in paragraphs 1, 2, 4 and 4a of this Article, and the ~~competent~~ **screening** authority referred to in Article 6(7) of Regulation (EU) 2020/XXX, and shall communicate a list of those authorities to eu-LISA without delay, in accordance with Article 87(2) of this Regulation. That list shall specify for which purpose the duly authorised staff of each authority shall have access to the data in the ETIAS Information System in accordance with paragraphs 1, 2, 4 and 4a of this Article."

(3) the following Article 35a is inserted after Article 35:

"*Article 35a*

Tasks of the ETIAS National Unit and Europol regarding the ETIAS watchlist for the purpose of the screening procedure

5. In cases referred to in the third paragraph of Article 13(4b), the ETIAS Central System shall send an automated notification to the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist.

6. Within ~~4~~ **3** days of the receipt of the notification, the ETIAS National Unit(s) or Europol shall provide a reasoned opinion to the Member State performing the Screening, as to whether the third country national undergoing the Screening poses a security threat. **If no opinion is provided, it should be considered that there is no security threat.**

7. ~~The reasoned opinion shall be provided through a secure notification mechanism to be set up by eu-LISA between the ETIAS National Units and Europol on the one part, and the competent authorities (of the Screening) on the other.~~

   In case the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist consider the third country national undergoing the Screening poses a security threat, it can inform the competent authorities in any appropriate manner.

8. The automated notification(s) referred to in paragraph 1 shall contain the data referred to in Article 10(1) of Regulation (EU) xxxx/yyyy (Screening) used for the query."

(4) in Article 69(1), the following point (ea) is inserted after point (e):

"(ea) where relevant, a reference to queries entered in the ETIAS Central System for the purposes of Articles 10 and 11 Regulation (EU) XXX/YYYY (Screening), the hits triggered and the results of this query."

Article 19

Amendments to Regulation (EU) 2019/817

Regulation (EU) 2019/817 is amended as follows:

(4) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

"A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a of this Regulation, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22."

(b) paragraph 4 is replaced by the following:

"Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for verifying or establishing the identity of a person pursuant to Article 20a of this Regulation, for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner."

(5) the following Article 20a is inserted after article 20:

"Article 20a

Access to the common identity repository for identification according to Regulation (EU) 2020/XXX

1. Queries of the CIR shall be carried out by the designated competent authority as referred to in Article 6(7) of Regulation (EU) yyyy/XXX (Screening), solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.

2. Where the query indicates that data on that person are stored in the CIR, the competent authority shall have access to consult the data referred to in Article 18(1) of this Regulation as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/818 of the European Parliament and the Council."

(6) in Article 24, ~~the following paragraph 2a is inserted after paragraph 2:~~

(c) Paragraph 1 is replaced by the following:

'1. Without prejudice to Article 29 of Regulation (EU) 2019/816, eu-LISA shall keep logs of all data processing operations in the CIR in accordance with paragraphs 2, 2a, 3 and 4 of this Article.'

(d) the following paragraph 2a is inserted after paragraph 2:

"2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:

(f) the Member State launching the query;

(g) the purpose of access of the user querying via the CIR;

(h) the date and time of the query;

(i) the type of data used to launch the query;

(j) the results of the query."

~~*Article 19a*~~

~~*Amendments to Regulation (EU) 2019/818*~~

~~Regulation (EU) 2019/818 is amended as follows:~~

~~(4) Article 17 is amended as follows:~~

~~(b) paragraph 1 is replaced by the following:~~

~~"A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a of this Regulation, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22."~~

~~(b) paragraph 4 is replaced by the following:~~

~~" Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for verifying or establishing the identity of a person pursuant to Article 20a of this Regulation for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner.~~

~~(5) the following Article 20a is inserted after Article 20:~~

~~"*Article 20a*~~

~~Access to the common identity repository for identification according to Regulation (EU) 2020/XXX~~

~~1. Queries of the CIR shall be carried out by the designated competent authority as referred to in Article 6(7) of Regulation (EU) YYYY/XXXX (Screening), solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.~~

~~2. Where the query indicates that data on that person are stored in the CIR, the competent authority shall have access to consult the data referred to in Article18(1) of this Regulation as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/817 of the European Parliament and the Council."~~

~~(6) in Article 24, the following paragraph 2a is inserted after paragraph 2:~~

~~"2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:~~

~~(f) the Member State launching the query;~~

~~(g) the purpose of access of the user querying via the CIR;~~

~~(h) the date and time of the query;~~

~~(i) the type of data used to launch the query;~~

~~(j) the results of the query."~~

Article 20

Evaluation

[Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.]

No sooner than [five] years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report~~, at the latest six months before the [five] years' time limit expires~~.

Article 21

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall start to apply 6 months from its entry into force.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

HU comments:

We can accept the proposed 6 months long transition period.

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 7

Monitoring of fundamental rights

1. Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening.

2. Each Member State shall ~~establish~~ **provide for** an independent monitoring mechanism

   – to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening;

   – where applicable, to ensure compliance with national rules on ~~detention of the person concerned, in particular concerning the grounds and the duration of the detention;~~**restrictive measures taken to ensure that the third country national remains at the disposal of the designated authorities**.

   – to ensure that allegations of non-respect for fundamental rights in relation to the screening, including in relation to access to the asylum procedure and non-compliance with the principle of non-refoulement, are dealt with effectively and without undue delay.

   Member States shall put in place adequate safeguards to guarantee the independence of the mechanism.

   The Fundamental Rights Agency shall issue general guidance for Member States on the setting up of such mechanism and its independent functioning. Furthermore, Member States may request the Fundamental Rights Agency to support them in developing their national monitoring mechanism, including the safeguards for independence of such mechanisms, as well as the monitoring methodology and appropriate training schemes.

   ~~Member States may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring.~~

COMMENT:

As for the changes in **para. 2** we welcome the deletion of the reference to the detention, even though the new wording remains deliberately ambiguous as regards the so called *"restrictive measures"* that the Member State has to provide to ensure that the TCN doesn't abscond.

Article 8

Provision of information

1. Third-country nationals subject to the screening shall be succinctly informed about ~~the purpose and the modalities of the screening~~:

   (a) the **purpose, elements,** ~~steps~~ and modalities of the screening as well as possible outcomes of the screening;

   (b) the rights and obligations of third country nationals during the screening, including the obligation on them to remain **at the disposal of the competent authorities for the duration of** ~~in the designated facilities during~~ the screening.

2. During the screening, they shall also, as appropriate, receive information on:

   (a) the applicable rules on the conditions of entry for third-country nationals in accordance with Regulation (No) 2016/399 [Schengen Border Code], as well as on other conditions of entry, stay and residence of the Member State concerned, to the extent this information has not been given already;

   (b) t**he applicable rules on applying** ~~where they have applied, or there are indications that they wish to apply,~~ for international protection, information on the obligation to apply for international protection in the Member State of first entry or legal stay set out in Article [9(1) and (2)] of Regulation (EU) No XXX/XXX [ex-Dublin Regulation], the consequences of non-compliance set out in Article [10(1)] of that Regulation, and the information set out in Article 11 of that Regulation as well as on the procedures that follow the making of an application for international protection;

   (c) the obligation for illegally staying third-country nationals to return in accordance with Directive XXXXX [Return Directive];

   (d) the possibilities to enrol in a programme providing logistical, financial and other material or in-kind assistance for the purpose of supporting voluntary departure;

   (e) the conditions of participation in relocation in accordance with Article XX of Regulation (EU) No XXX/XXX [ex-Dublin Regulation];

   (f) the information referred to in Article 13 of the Regulation (EU) 2016/679[7] [GDPR].

3. The information provided during the screening shall be given in a language which the third-country national understands or is reasonably supposed to understand. The information shall be given in writing and, i~~n exceptional circumstances,~~ where necessary, orally using interpretation services. It shall be provided in an appropriate manner **in the case of vulnerable persons.** ~~taking into account the age and the gender of the person.~~

[7] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), OJ L 119, 4.5.2016

4. Member States may authorise relevant and competent national, international and non-governmental organisations and bodies to provide third country nationals with information under this article during the screening according to the provisions established by national law. **Such information may also be provided with the assistance of the EU agencies or based on the information developed by them, as appropriate.**

COMMENT:

As a general remark, since this provision establishes the right for TCNs to receive summary information, we believe it is necessary to clarify, in the event of non-compliance, both what are the consequences for Member States and the possible remedies available to the TCNs.

Even if during the vtc of 11 February, upon our request, the Commission has made it clear that it will be left to national legislation to provide for any remedies, we consider this an elusive reply.

Indeed, under EU law it is unlikely that a Member State's obligation towards a private individual will not lead to a qualified subjective position for the fulfilment of that obligation for the individual.

In the present case it is clear that an individual right to obtain a remedy in the event of non-compliance or incorrect compliance must be attributed.

Therefore, given the nature of the present regulation proposal (binding in its entirety and directly applicable in all Member States) it would be necessary for Article 8 to explicitly clarify what exact autonomy do Member States have in determining the remedies in case of non compliance. In particular, for sake of clarity, it would be important to determine the limits of the mentioned autonomy and whether it includes also the possibility of denying a right to take legal action.

Alternatively, it could be established that *"Member States can make the judicial action conditional on proof, with burden on the individual, of a specific interest in invoking the omitted information"*.

As regards the new draft, even though we agree with the amendments made in para. 1/3, we believe that the reference to the "designated facilities" in **para. 1.b** may not be in line with the provisions under art. 4 para. 1 and art. 6 para. 1 (that actually don't mention any "designated facilities"). Therefore, we propose to modify the text by replacing the expression "designated facilities" with the same wording used at art. 4 para 1.

As for the new wording in **para. 4** we believe it is not clear and may be misinterpreted, notably with regard to the sentence *"based on information developed by them"*.

Article 9

Health checks and vulnerabilities

1. Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a preliminary **health check** ~~medical examination~~ with a view to identifying any needs for immediate care or isolation on public health grounds, ~~unless, based on the circumstances concerning the general state of the individual third-country nationals concerned and the grounds for directing them to the screening, the relevant competent authorities~~ are satisfied ~~**consider**~~ that no preliminary ~~medical~~ ~~**health check**~~ screening ~~is necessary~~. ~~In that case, they shall inform those persons accordingly.~~

2. **In particular** ~~Where relevant,~~ it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation, **and collect information on possible special reception or procedural needs** ~~victims of torture or have special reception or procedural needs within the meaning of Article 20 of the [recast] Reception Conditions Directive.~~

3. Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive ~~timely~~ and adequate support in view of their physical and mental health. In the case of **subject identified as** minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities.

~~4. Where it is deemed necessary based on the circumstances, third-country nationals submitted to the screening referred to in Article 5 shall be subject to a preliminary medical examination, notably to identify any medical condition requiring immediate care, special assistance or isolation.~~

COMMENT:

Since we believe that a preliminary health check should always take place, especially in the case of vulnerable subjects, we propose the above indicated amendments to make in **para. 1 and 2** that currently provide too much discretion to the competent authorities about the decision to check or not the TCNs.

As for **para. 3,** we reiterate the amendment to the text already proposed during the first exam of this proposal as regards the reference to minors, since we believe that the duration of the screening may be incompatible with the time required for a reliable assessment of the minor age of the TCN. We also think that the word *"timely"* could be deleted, since the word *"adequate"* already includes the concept of timeliness.

Article 10

*Identification **and verification of identity***

1. To the extent it has not yet occurred during the application of Article 8 of Regulation (EU) 2016/399, the identity of third-country nationals submitted to the screening pursuant to Article 3 or Article 5 shall be verified or established, by using, **where applicable,** ~~in particular~~ the following **data,** ~~in combination with national and European databases:~~

   (a) identity, travel or other documents;

   (b) data or information provided by or obtained from the third-country national concerned; and

   (c) biometric data;

2. For the purpose of the identification **and verification** ~~referred to in paragraph 1~~, the competent authorities shall query any relevant national databases as well as the common identity repository (CIR) referred to in Article 17 of Regulation (EU) 2019/817, **and the Schengen Information System (SIS) using the data referred to in paragraph 1**. ~~The biometric data of a third-country national taken live during the screening, as well as the identity data and, where available, travel document data shall be used to that end.~~

3. **Biometric data of a third-country national taken live shall be used for searches in the CIR.** Where the biometric data of the third-country national cannot be used or where the query with those data referred to in paragraph 2 fails **or returns no result**, the query as referred to in paragraph 2 shall be carried out with the identity data of the third-country national, in combination with any ~~identity,~~ travel or other document data, or with **any of** the ~~identity~~ data ~~provided by that third-country national~~ **referred to in paragraph 1(b)**.

4. Searches in the SIS with biometric data shall be carried out in accordance with Article 33 of Regulation (EU) 2018/1861 and Article 43 of Regulation (EU) 2018/1862. A search with the biometric data of the third-country national in combination with any travel or other document data or with any of the data referred to in paragraph 1(b) shall in all cases be carried out in SIS.

5. The checks, where possible, shall also include the verification of at least one of the biometric identifiers integrated into any identity, travel or other document.

6. This article is without prejudice to actions undertaken in line with national law with a view to establish the identity of the person concerned.

Article 11

Security check

1. Third country nationals submitted to the screening pursuant to Article 3 or Article 5 shall undergo a security check to verify that they do not ~~constitute~~ **pose** a threat to **public policy,** internal security **or international relations for any of the Member States**. The security check may cover both the third-country nationals and the objects in their possession. The law of the Member State concerned shall apply to any searches carried out.

2. For the purpose of conducting the security check referred to in paragraph 1, and ~~to the extent that they have not yet done so in accordance with Article 8(3), point (a)(vi), of Regulation (EU) 2016/399, the competent authorities shall query relevant national and Union databases, in particular the Schengen Information System (SIS). T~~ **t**o the extent it has not been already done during the checks referred to in Article 8 of Regulation (EU) 2016/399, the competent authority shall query **relevant national and Union databases, in particular the Schengen Information System (SIS), the** Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), including the ETIAS watch list referred to in Article ~~29~~ **34** of Regulation (EU) 2018/1240, the Visa Information System (VIS), the ECRIS-TCN system as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned, the Europol data processed for the purpose referred to in Article 18(2), point (a), of Regulation (EU) 2016/794, **the Interpol Stolen and Lost travel documents database (Interpol SLTD)** and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) with the data referred to in Article 10(1) and using at least the data referred to under point (c) thereof.

~~4~~**.3**. As regards the consultation of EES, ETIAS and VIS pursuant to paragraph 3, the ~~retrieved data~~ **query** shall be limited to ~~indicating~~ **decisions to** ~~refusals~~ **refuse, annul or revoke** ~~of~~ a travel authorisation, refusals of entry, or decisions to refuse, annul or revoke a visa or residence permit, which are based on security grounds.

The consultation of the ETIAS watchlist pursuant to paragraph 3 shall be in accordance with Article 12(5) of this Regulation and Article 35(1), point (a), of Regulation (EU) 2018/1240.

[The consultation of ECRIS-TCN shall be in accordance with Regulation (EU) …/… [Regulation on the Screening consequential amendments]].

~~5~~**.4**. The Commission shall adopt implementing acts setting out the detailed procedure and specifications for retrieving data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

COMMENT:

As for the new **sub para. 3** and the reference to "*art. 12.5 and art. 35.a of Regulation 2018/1240 "* we suggest to slightly amend the text, mainly in order to avoid the otherwise erroneous impression that both the articles mentioned are in the Etias regulation.

Article 12

Modalities for security checks

1. The queries provided for in Article 10(2) and in Article 11(2) may be launched using, for queries related to EU information systems and the CIR, the European Search Portal in accordance with Chapter II of Regulation (EU) 2019/817 and with Chapter II of Regulation (EU) 2019/818[8]. **When the hit is obtained following a query against the SIS, the competent authority shall consult the SIRENE Bureau of the alert issuing Member State in accordance with Regulation (EU) 2018/1861 and Regulation (EU) 2018/1862**.

2. Where a match is obtained following a query as provided for in Article 11(**2**) **and** (3) against data in one of the information systems, the competent authority shall have access to consult the file corresponding to that match in the respective information system in order to determine the risk to **public policy**, internal security **or international relations pursuant to** ~~as referred to~~ in Article 11(1).

3. Where a query as provided for in Article 11(3) reports a match against Europol data, the competent authority of the Member State shall inform Europol in order to take, if needed, any appropriate follow-up action in accordance with the relevant legislation.

4. Where a query as provided for in Article 11(3) reports a match against the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) **or the Interpol Stolen and Lost Documents database**, the competent authority of the Member State shall inform the Interpol National Central Bureau of the Member State that launched the query in order to take, if needed, any appropriate follow-up action in accordance with the relevant legislation.

5. I**n accordance with Article 35a of Regulation (EU) 2018/1240, in the event of a hit in the ETIAS watchlist, the ETIAS National Unit or Europol having entered the data in the ETIAS watchlist shall be automatically notified and shall provide a reasoned opinion to the competent authority performing the Screening within two days of the receipt of the notification, in case of screening pursuant to Article 5, or three days of the receipt of the notification in other cases. The absence of a reply within that deadline shall mean that there are no security risks to be taken into consideration.**

6. The Commission shall adopt implementing acts to specify the procedure for cooperation between the authorities responsible for carrying out the screening, Interpol National Central Bureaux~~,~~ **and** Europol national unit~~, and ECRIS-TCN central authorities~~, respectively, to determine the risk to **public policy**, internal security **or international relations**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).

[8] Regulation (EU) 2019/818 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of police and judicial cooperation, asylum and migration, OJ L 135, 22.5.2019, p. 85.

Article 13

~~*De-briefing*~~ ***Screening*** *form*

1. On completion of the screening, the competent authorities shall, with regard to the persons referred to in Article 3 and in Article 5, complete the form in Annex I containing, **at least, the following data:**

   (a) name, date and place of birth and sex;

   (b) initial **and subsequent** indication of nationalities, countries of residence prior to arrival and languages spoken;

   c) information on vulnerability identified during the screening.

2. Where available, the following data should be included:

   (~~e~~**a**) reason for unauthorised arrival, entry, and, where appropriate illegal stay or residence, including information on whether the person made an application for international protection;

   (~~d~~**b**) information obtained on routes travelled, including the point of departure, the places of previous residence, the third countries of transit and those where **application for international** protection may have been **made** ~~sought~~ or granted as well as the intended destination within the Union **and presence and validity of travel documents;**

   (~~e~~**c**) information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling.

   (d) Any other relevant information.

Article 14

Outcome of the screening

1. The third country nationals referred to in Article 3(1) point (a) and (b) of this Regulation who

   – have not **made an application** ~~applied~~ for international protection ~~and~~

   ~~– with regard to whom the screening has not revealed that they fulfil entry conditions set out in Article 6 of Regulation (EU) 2016/399,~~

   shall be referred to the competent authorities to apply procedures respecting Directive (EU) 2008/115/EC (Return Directive).

In **the** cases **referred to in Article 3, paragraphs 1 and 2** ~~not related to search and rescue operations~~, entry may be refused in accordance with Article 14 of Regulation 2016/399.

The form referred to in Article 13 shall be transmitted to the relevant authorities to whom the third country national is being referred.

2. Third-country nationals who made an application for international protection shall be referred to the authorities referred to in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation], together with the form referred to in Article 13 of this Regulation. ~~On that occasion, the authorities conducting the screening shall point in the de-briefing form to any elements which seem at first sight to be relevant to refer the third-country nationals concerned into the accelerated examination procedure or the border procedure.~~

3. Where the third country national is to be relocated under the mechanism for solidarity established by Article XX of Regulation (EU) No XXXX/XXXX [Dublin Regulation], the third-country national concerned shall be referred to the relevant authorities of the Member States concerned together with the form referred to in Article 13.

4. The third-country nationals referred to in Article 5, who

– have not applied for international protection and

~~– with regard to whom the screening has not revealed that they fulfil the conditions for entry and stay~~

shall be subject to return procedures respecting Directive 2008/115/EC.

5. Where third-country nationals submitted to the screening in accordance with Article 5 make an application for international protection as referred to in Article 25 of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation), paragraph 2 of this Article shall apply accordingly.

6. In respect of third-country nationals to whom Regulation EU No XXX/XXX [Eurodac Regulation] applies, the competent authorities shall take the biometric data referred to in Articles [10, 13, 14 and 14a] of that Regulation (EU) and shall transmit it in accordance with that Regulation.

7. Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum**, refusal of entry** or return, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure. **Where necessary, the checks set forth under this Regulation may continue within the subsequent procedure.**

COMMENT:

As regards the sentence referred to in **para. 1** concerning the possibility for Member States to refuse entry into the national territory in accordance with art. 14 of Regulation 2016/399 with the exception of cases relating to SAR operations, as art 4.1 provides "*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…"*, we propose to amend the text accordingly.

Indeed, if TCNs are not authorized to enter the territory of a Member State as indicated in art. 4, that Member State should be allowed to refuse entrance in accordance to art. 14 Regulation 2016/399. Furthermore, the reasons why arrivals resulting from SAR events have been expressly excluded in the current text proposal as regards the applying of the above mentioned art. 14 (refusal of entry), do not appear to us sufficiently clear, despite the explanations provided by the Commission during the last Frontiers WP meeting (February 12). As a matter of fact, the refusal of entry would potentially remain applicable to some cases of irregular entry even outside the border crossing points such as, for example, the TCN's tracing in the context of land border surveillance operations. In these cases, once the screening is completed, the Member State (also on the basis of its national legislation) could still proceed with a refusal of entry, without activating the more complex return procedure.

Article 15

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply. **Where the Committee delivers no opinion, the Commission shall not adopt the draft implementing act, and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.**

Article 16

Amendments to Regulation (EC) No 767/2008

Regulation (EC) No 767/2008 is amended as follows:

(1) in Article 6, paragraph 2 is replaced by the following:

"(2) Access to the VIS for consulting the data shall be reserved exclusively for the duly authorised staff of:

(a) the national authorities of each Member State and of the EU bodies which are competent for the purposes laid down in Articles 15 to 22, Articles 22g to 22m, and Article 45e;

(b) the ETIAS Central Unit and the ETIAS National Units, designated pursuant to Articles 7 and 8 of Regulation (EU) 2018/1240, for the purposes laid down in Articles 18c and 18d of this Regulation and in Regulation (EU) 2018/1240;

(c) the ~~competent~~ **screening** authorities, designated pursuant to Article 6(7) of Regulation (EU) 2020/XXX [screening regulation], for the purposes laid down in Articles 10 to 12 of that Regulation;

(d) the national authorities of each Member State and of the Union bodies which are competent for the purposes laid down in Articles 20 and 21 of Regulation (EU) 2019/817.

That access shall be limited to the extent that the data are required for the performance of their tasks in accordance with those purposes, and proportionate to the objectives pursued."

Article 17

Amendments to Regulation (EU) 2017/2226

Regulation (EU) 2017/2226 is amended as follows:

(1) in Article 6(1), the following point (k) is inserted after point (j):

"(k) support the objectives of the screening established by Regulation (EU) 2020/XXX of the European Parliament and of the Council[9], in particular for the checks provided under Article 10 thereof."

(2) Article 9 is amended as follows:

(a) the following paragraph 2a is inserted after paragraph 2:

"2a. The competent screening authorities referred to in Article 6(7) of Regulation (EU) 2020/XXX shall have access to the EES to consult data.";

(b) paragraph 4 is replaced by the following:

"(4) Access to the EES data stored in the CIR shall be reserved exclusively for the duly authorised staff of the national authorities of each Member State and for the duly authorised staff of the Union agencies that are competent for the purposes laid down in Article 20, Article 20a and Article 21 of Regulations (EU) 2019/817 and 2019/818. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued."

(3) the following Article 24a is inserted after Article 24:

"Article 24a

Access to data for the identification and for the security check for the purposes of screening

1. For the purposes of verifying or establishing the identity of a person pursuant to Article 10 of Regulation (EU) XXX/YYYY (Screening) and the carrying out of security checks pursuant to Articles 11 and 12 of that Regulation, competent the screening authorities referred to in Article 6(7) of that same Regulation shall have access to EES data to the extent necessary to be able to carry out searches using the data referred to in Article 10(1) of Regulation (EU) XXX/YYYY (Screening) against the data stored in the EES in accordance with points (a) to (d) of Article 16(1) and points (a) to (c) of Article 17(1) of this Regulation.

2. If the search carried out pursuant to paragraph 1 indicates that data on the person are stored in the EES, the competent authority referred in paragraph 1 shall be given access to the data of the individual file, the entry/exit records and refusal of entry records linked to it.

If the individual file referred to in the first subparagraph does not include any biometric data, the competent authorities may proceed to access the biometric data of that person and verify correspondence in VIS in accordance with Article 6 of Regulation (EC) No 767/2008."

[9] See footnote of the proposal

(7) in Article 46(1), point (a) is replaced by the following:

"(a) The purpose of the access referred to in Article 9 and Article 9(2a)."

Article 18

Amendments to Regulation (EU) 2018/1240

Regulation (EU) 2018/1240 is amended as follows:

(1) in Article 4, point (a) is replaced by the following:

"(a) contribute to a high level of security by providing for a thorough security risk assessment of applicants, prior to their arrival at external border crossing points, and of persons subject to the screening referred to in Regulation (EU) 2020/XXX [Screening Regulation], in order to determine whether there are factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a security risk;"

(2) In paragraph 2 of Article 8 a new point (h) is added:

(h) providing opinions in accordance with Article 35a.

(3) Article 13 is amended as follows:

(a) the following paragraph 4b is inserted after paragraph 4a:

"4b. For the purposes of Articles 10 to 12 of Regulation (EU) XXX/YYYY (Screening), competent authorities referred to in Article 6(7) of that Regulation, shall have access to the data in the ETIAS Central System to the extent necessary to be able to carry out searches using the data referred to in Article 10(1)(a) and (b) of that Regulation against the data contained in the ETIAS Information System.

If the search carried out pursuant to paragraph 1 reveals a match, the competent authorities shall have 'read-only' access, to the ETIAS applications files stored in the ETIAS Central system.

If the search carried out pursuant to paragraph 1 indicates that there is a correspondence between the data used for the search and the data recorded in the ETIAS watchlist referred to in Article 34, the ETIAS National Unit or Europol having entered the data in the watchlist shall be notified in accordance with Article 35a of this Regulation."

paragraph 5 is replaced by the following:

"5. Each Member State shall designate the competent national authorities referred to in paragraphs 1, 2, 4 and 4a of this Article, and the ~~competent~~ **screening** authority referred to in Article 6(7) of Regulation (EU) 2020/XXX, and shall communicate a list of those authorities to eu-LISA without delay, in accordance with Article 87(2) of this Regulation. That list shall specify for which purpose the duly authorised staff of each authority shall have access to the data in the ETIAS Information System in accordance with paragraphs 1, 2, 4 and 4a of this Article."

(7) the following Article 35a is inserted after Article 35:

"Article 35a

Tasks of the ETIAS National Unit and Europol regarding the ETIAS watchlist for the purpose of the screening procedure

1. In cases referred to in the third paragraph of Article 13(4b), the ETIAS Central System shall send an automated notification to the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist.

2. Within ~~4~~ **3** days of the receipt of the notification, the ETIAS National Unit(s) or Europol shall provide a reasoned opinion to the Member State performing the Screening, as to whether the third country national undergoing the Screening poses a security threat. **If no opinion is provided, it should be considered that there is no security threat.**

3. ~~The reasoned opinion shall be provided through a secure notification mechanism to be set up by eu-LISA between the ETIAS National Units and Europol on the one part, and the competent authorities (of the Screening) on the other.~~

   In case the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist consider the third country national undergoing the Screening poses a security threat, it can inform the competent authorities in any appropriate manner.

4. The automated notification(s) referred to in paragraph 1 shall contain the data referred to in Article 10(1) of Regulation (EU) xxxx/yyyy (Screening) used for the query."

(4) in Article 69(1), the following point (ea) is inserted after point (e):

"(ea) where relevant, a reference to queries entered in the ETIAS Central System for the purposes of Articles 10 and 11 Regulation (EU) XXX/YYYY (Screening), the hits triggered and the results of this query."

Article 19

Amendments to Regulation (EU) 2019/817

Regulation (EU) 2019/817 is amended as follows:

(1) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

"A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a of this Regulation, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22."

(b) paragraph 4 is replaced by the following:

"Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for verifying or establishing the identity of a person pursuant to Article 20a of this Regulation, for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner."

(2) the following Article 20a is inserted after article 20:

"Article 20a

Access to the common identity repository for identification according to Regulation (EU) 2020/XXX

1. Queries of the CIR shall be carried out by the designated competent authority as referred to in Article 6(7) of Regulation (EU) yyyy/XXX (Screening), solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.

2. Where the query indicates that data on that person are stored in the CIR, the competent authority shall have access to consult the data referred to in Article 18(1) of this Regulation as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/818 of the European Parliament and the Council."

(3) in Article 24, ~~the following paragraph 2a is inserted after paragraph 2:~~

(a) Paragraph 1 is replaced by the following:

'1. Without prejudice to Article 29 of Regulation (EU) 2019/816, eu-LISA shall keep logs of all data processing operations in the CIR in accordance with paragraphs 2, 2a, 3 and 4 of this Article.'

(b) the following paragraph 2a is inserted after paragraph 2:

"2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:

(a) the Member State launching the query;

(b) the purpose of access of the user querying via the CIR;

(c) the date and time of the query;

(d) the type of data used to launch the query;

(e) the results of the query."

Article 19a

Amendments to Regulation (EU) 2019/818

Regulation (EU) 2019/818 is amended as follows:

(1) Article 17 is amended as follows:

(a) paragraph 1 is replaced by the following:

"A common identity repository (CIR), creating an individual file for each person that is registered in the EES, VIS, ETIAS, Eurodac or ECRIS-TCN containing the data referred to in Article 18, is established for the purpose of facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in accordance with Articles 20 and 20a of this Regulation, of supporting the functioning of the MID in accordance with Article 21 and of facilitating and streamlining access by designated authorities and Europol to the EES, VIS, ETIAS and Eurodac, where necessary for the prevention, detection or investigation of terrorist offences or other serious criminal offences in accordance with Article 22."

(c) paragraph 4 is replaced by the following:

" Where it is technically impossible because of a failure of the CIR to query the CIR for the purpose of identifying a person pursuant to Article 20 or for verifying or establishing the identity of a person pursuant to Article 20a of this Regulation for the detection of multiple identities pursuant to Article 21 or for the purposes of preventing, detecting or investigating terrorist offences or other serious criminal offences pursuant to Article 22, the CIR users shall be notified by eu-LISA in an automated manner.

(2) the following Article 20a is inserted after Article 20:

"Article 20a

Access to the common identity repository for identification according to Regulation (EU) 2020/XXX

1. Queries of the CIR shall be carried out by the designated competent authority as referred to in Article 6(7) of Regulation (EU) YYYY/XXXX (Screening), solely for the purpose of verifying or establishing the identity of a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.

2. Where the query indicates that data on that person are stored in the CIR, the competent authority shall have access to consult the data referred to in Article18(1) of this Regulation as well as to the data referred to in Article 18(1) of Regulation (EU) 2019/817 of the European Parliament and the Council."

~~(3) in Article 24, the following paragraph 2a is inserted after paragraph 2:~~

~~"2a. eu-LISA shall keep logs of all data processing operations pursuant to Article 20a in the CIR. Those logs shall include the following:~~

~~(a) the Member State launching the query;~~

~~(b) the purpose of access of the user querying via the CIR;~~

~~(c) the date and time of the query;~~

~~(d) the type of data used to launch the query;~~

~~(e) the results of the query."~~

Article 20

Evaluation

[Three years after entry into force, the Commission shall report on the implementation of the measures set out in this Regulation.]

No sooner than [five] years after the date of application of this Regulation, and every five years thereafter, the Commission shall carry out an evaluation of this Regulation. The Commission shall present a Report on the main findings to the European Parliament, the Council and the European Economic and Social Committee. Member States shall provide the Commission all information necessary for the preparation of that report, ~~at the latest six months before the [five] years' time limit expires.~~

Article 21

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall start to apply ~~6~~ months from its entry into force.

This Regulation shall be binding in its entirety and directly applicable in the Member States in accordance with the Treaties.

COMMENT:

We believe that the six-month deadline foreseen for the application of the actual proposal is too short especially in view of the considerable organizational efforts and possible modifications to the national legislation required on Member States in order to adapt to the new tasks deriving from the present Regulation proposal.

LATVIA

Article 4 (*Article 4Authorisation to enter the territory of the Member State)*

As it was understood from last discussions in the Frontiers Working Party the legal fiction could be maintained, although at this moment it is not clear what is mean by the addition to the second paragraph of Para 1 of Article 4 and second paragraph of Article 5 – *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*. It would be beneficial to receive a clarification from PT PRES on how to fulfil this norm that the person remains at the disposal of the competent authorities for the screening. If it is detention and other means, could it be elaborated more on what kind of alternatives to detention could fulfil the „remain at the disposal" condition.

Article 6 (*Article 6 Requirements concerning the screening*)

In Article 6 Para 1 and Para 3 it should be clarified that screening can be done in existing centres, which are suitable for such checks in order not have a confusion that there is a necessity to have infrastructure at the proximity of the external border only.

Article 13 (*Article 13 Screening form)*

Taking into account the amount of information in Annex 1 (Screening form), Latvia proposes in Article 13 Para 1 to supplement with information on the results of check under Article 10 and Article 11 (results of identification and verification of identity and security check) in order to provide the possibility to mark and enter additional information, for example if a notification is received from the SIS or EES.

Latvia would like to receive information on whether it is planned to list (in the list of titles) under point 8 (*Identification using IT databases was carried out*) and point 9 (*Results of the consultation for security purposes*) all information systems in which the checks have been carried out and to add the results opposite of each system checked. Also under point 9 of Annex I where information provided "*No Hit*", there should be an indication with a list of systems in in which system such information has been obtained.

Article 18 (Article 18 Amendments to Regulation (EU) 2018/1240)

Latvia would like to point that the amendment of Article 13 of the ETIAS Regulation is being supplemented by Para 4b in order to allow the competent authorities carrying out the screening to have access to the data in the ETIAS Central System.

At the same time, Article 13 Para 5 changes "competent authorities" into "screening authorities" (*and the screening authority referred to in.....*). Latvia proposes to supplement Article 13 Para 5 with a simple reference to Article 13 Para 4b ("*Para 1, 2, 4, 4a and 4b*"), as the "competent authority" has not been renamed to the "screening authority" in Para 4b itself. If the version of the text of amendment with the "screening authority" remains, the definition of the "screening authority" should be included in the ETIAS Regulation by amending Article 3 of the ETIAS Regulation (e.g. where border authorities and immigration authorities have already been defined).

MALTA

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 consider supporting 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.

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 7

Due to legal, operational and infrastructural changes required, Malta suggests that the fundamental rights monitoring mechanism shall start to apply within 2 years after the Pre-Entry Screening Regulation enters into force, rather than within 20 days following the publication of the Regulation in the official journal of the EU.

Article 8

Malta suggests that Article 8(2)(a) should be amended as follows:

"Where there are indications that they wish to make an application for international protection, *the applicable rules on applying for international protection, information on the obligation to apply for international protection in the Member State of first entry or legal stay set out in Article [9(1) and (2)] of Regulation (EU) No XXX/XXX [ex-Dublin Regulation], the consequences of non-compliance set out in Article [10(1)] of that Regulation, and the information set out in Article 11 of that Regulation as well as on the procedures that follow the making of an application for international protection;"*

Justification: Information pertaining to the asylum procedure should not be provided to each and every individual who is subject to screening, but only to those individuals for whom there are indications that they wish to make an application.

Malta suggests that Article 8(3) should be amended as follows:

*"The information shall be given in writing ~~and~~ **or**, ~~in exceptional circumstances~~, where necessary, orally using interpretation services."*

Justification: given the mixed flows of migrants in our case, it is unlikely that information can be provided in writing in all languages and dialects. It could also be the case that migrants are unable to read. In that case, information should be given orally through interpreters.

Article 9

Malta, once again, proposes that health checks need to be carried out in accordance with national law. Therefore, in sub-article (1), we propose the following amendment:

*"Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a preliminary health check**, in accordance with national law**…"*

Justification: National health authorities conduct the relevant checks as they consider best in accordance with national law. Being a densely populated island might also entail different concerns than those of other Member States.

Under sub-article (2), a clarification should be added that the age assessment test should not be considered as part of the screening phase. Furthermore, competent authorities require more than 10 days to identify cases of victims subjected to psychological torture, non-physical disabilities, age assessment or cases requiring in-depth examination to determine special reception or procedural needs.

Article 13

Malta proposes to amend Article 13(1)(a) as following:

*"(a) name, date and place of birth and sex **as confirmed or declared by the third country national**;"*

Justification: In the case of undocumented third country nationals, the competent authority may not be able to verify the details stated by the third country national and therefore has to indicate only the information provided.

Article13(1)(c) should be amended:

*"(c) **where applicable**, information on vulnerability identified during the screening".*

Justification: Not all third country nationals have vulnerabilities and not all vulnerabilities are easily detected within the tight timeframes provided.

Article 20

In line with the comments provided for Article 21, the evaluation of the Regulation by the Commission should be carried out 3 years after the date the Regulation starts to apply.

Article 21

Given the legal and infrastructural changes required at national level to amend national law and align it with the Regulation and to set up a monitoring mechanism, Malta believes that 6 months is not enough. The Regulation should start to apply 2 years from its entry into force.

POLAND

1. Article 7 Monitoring of fundamental rights

The monitoring mechanism raises doubts. Its creates additional administrative and financial burdens.

Mentioned in Article 7 (2), "guidance" should be recommendations, not binding guidelines as below:

„The Fundamental Rights Agency shall issue general and non-binding guidance for Member States on the setting up of such mechanism and its independent functioning".

2. Article 9 Health checks and vulnerabilities - written proposal:

1. Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a preliminary **health check** ~~medical examination~~ with a view to identifying any needs for immediate care or isolation on public health grounds, if , based on the circumstances concerning the general state of the individual third-country nationals concerned and the grounds for directing them to the screening, the relevant competent authorities ~~are satisfied~~ consider that preliminary ~~medical~~ **health check** ~~screening~~ is necessary. ~~In that case, they shall inform those persons accordingly.~~

3. Legal basis for detention.

The legal basis for the screening detention should be regulated in the regulation or the regulation should provide a strong basis for detention of third-country nationals.

3. Implementation period.

A longer implementation period for the regulation is needed (the proposed period of 6 months is also too short).

The regulation should enter into force together with the Asylum Procedures Regulation (APR) so that screened persons can be forwarded to the aproppiate border procedure.

4. Article 12 Hit in ECRIS TCN

There is a need for clarification in Art. 12 or explanations in the recitals that the hit on ECRIS-TCN does not mean that the third-country national poses a threat and has been convicted in a given MS. The hit requires consultation and confirmation by the competent ECRIS-TCN authorities.

ROMANIA

Article 8 Provision of information - Para 2

RO is of the opinion that, by systematically informing all persons subject to the Screening Regulation about the possibility to apply for asylum, an increase in the asylum applications would occur, as this would lead to abuse of the asylum procedure and a pull factor. In this regard, RO prefers suggest keeping the initial form of the text (***where they have applied, or there are indications that they wish to apply***, *for international protection…).*

In addition, consideration should be given to a standardization of the information to be provided in writing to the TCNs during the screening under this article, for example by drafting a common leaflet, as it was discussed during the previous meetings.

Article 9 Health checks and vulnerabilities

Having in mind that there is no reference in this paragraph to the *qualified medical staff* mentioned at Article 6 para. 7, and after hearing the arguments pointed out by CION during the Frontiers WP, we would like to suggest the following redrafting of para. 1 to clarify the general rule applicable in relation to the preliminary health checks.

"*Third-country nationals submitted to the screening referred to in Article 3 shall be subject to a preliminary* ***health check*** ~~*medical examination*~~ ***carried out by qualified medical staff*** *with a view to identifying any needs for immediate care or isolation on public health grounds*~~*, unless*~~*.*

Based on the circumstances concerning the general state of the individual third-country nationals concerned and the grounds for directing them to the screening, the ~~*relevant competent authorities*~~ ***qualified medical staff*** ~~*are satisfied*~~ ***may consider*** *that no preliminary* ~~*medical*~~ ***health check*** ~~*screening*~~ *is necessary.* ~~*In that case, they shall inform those persons accordingly*~~."

RO appreciates that preliminary health checks should be carried out by qualified medical staff because they have necessary expertise and knowledge in this field.

Under the Romanian national procedure, the appointment of a legal representative for minors is a lenghty procedure, usually exceeding the period proposed for the screening. Therefore, it would be very likely that the cooperation with child support services described in para. 3 not to be successful so as to appoint a legal guardian for the minor in the said deadline. In addition, we prefer replacing "*trained and qualified*" with **competent**. In this regard, we suggest the following redrafting of Article 9 (3): "*Where there are indications of vulnerabilities or special reception or procedural needs, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by* ~~*trained and qualified*~~ ***competent*** *personnel to deal with minors, and in cooperation with child protection authorities,* ***where possible***.

Furthermore, in art. 6 (6) letter a) and in art. 9 (1) it is used the term preliminary health check while at art. 6 (7) it is used the term health check. For coherence purposes, RO appreciates that the terminology should be aligned.

Article 10 Identification and verification of identity

Taking into account that in some situations the TCNs subject to screening will not declare to the screening authorities their real identity, RO considers it more useful to have a reference in para. 1 to the ***declared or proved*** identity, for a smooth process: "*To the extent it has not yet occurred during the application of Article 8 of Regulation (EU) 2016/399, the* ***declared or proved*** *identity of third-country nationals submitted to the screening pursuant to Article 3 or Article 5 shall be verified or established, by using,* ***where applicable,*** ~~*in particular*~~ *the following* ***data***~~*, in combination with national and European databases*~~*.*"

Article 11 Security check

Para 3: at the first subparagraph, for clarity reasons, RO suggest the following redrafting: *"* ~~*As regards the consultation*~~ ***The query*** *of EES, ETIAS and VIS pursuant to paragraph* ~~*3*~~ ***2****, the* ~~*retrieved data*~~ ~~***query***~~ *shall be limited to* ~~*indicating*~~ ***decisions to*** ~~*refusals*~~ ***refuse, annul*** *or* ***revoke*** ~~*of*~~ *a travel authorisation, refusals of entry, or decisions to refuse, annul or revoke a visa or residence permit, which are based on security grounds*."

In the second subparagraph, the term *consultation* should be replaced with the term *query:* "*The* ~~*consultation*~~ ***query*** *of the ETIAS watchlist pursuant to paragraph 3 shall be in accordance with Article 12(5) and Article 35a of Regulation (EU) 2018/1240*." As mentioned in Art. 12 para. 5 and Art. 35a, in the situation of a hit, the ETIAS National Unit(s) or Europol having entered those data in the ETIAS watchlist shall receive an automated notification by the ETIAS Central System and shall send a reasoned opinion to the Member State performing the screening:

Para 4: for coherence purposes with para. 3, RO suggests to replace the word *retrieving with querying*. "*The Commission shall adopt implementing acts setting out the detailed procedure and specifications for* ~~*retrieving*~~ ***querying*** *data. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).*"

Article 12 Modalities for security checks

Para 6: RO supports CZ suggestion to add the ETIAS National Unit along with the Interpol National Central Bureaux and Europol National Unit. RO appreciates that cooperation between the screening authorities and the ETIAS National Units should be further clarified and one solution in this respect could be to have specific provisions covered in the implementing act. For example we are wondering whether the automated notification will also include references to the Member State in which the screening was performed or to the name of the screening authority which obtained a hit in the ETIAS watchlist, taking into account that there may be a situation where the ETIAS National Unit having entered the data in the ETIAS watchlist may belong to a different Member State that the one performing the screening."*The Commission shall adopt implementing acts to specify the procedure for cooperation between the authorities responsible for carrying out the screening, Interpol National Central Bureaux*~~*,*~~ ~~*and*~~ *Europol national unit* ***and ETIAS National Units*** ~~*, and ECRIS-TCN central authorities*~~*, respectively, to determine the risk to public policy, internal security or international relations. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 15(2).*"

Article 13 Screening form

RO suggest to add at para. 1 a new letter regarding ***whether the preliminary health check was carried out or not***.

Article 14 Outcome of the screening

RO considers that the application of the Readmission Agreements in the context of the screening Regulation should be further clarified. We would appreciate the Council Legal Service opinion regarding the link between the deadline foreseen for the accelerated procedure and the time limits established for the screening. One solution could be to include in the text a provision that the implementation of this regulation shall not affect the procedures established based on the Readmission Agreements.

Para 7: In order to ensure clarity, we consider it appropriate to replace the term ***checks*** with **verifications**, in order to refer to the result of all the activities carried out under the screening Regulation. RO suggest the following amendment: "*Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum, refusal of entry or return, the screening ends. Where not all the ~~checks~~ **verifications** have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure. Where necessary, the ~~checks~~ **verifications** set forth under this Regulation may continue within the subsequent procedure*."

Regarding the new sentence added at para 7, RO considers that a mention should be made in the screening form, in case the verifications will continue within the subsequent procedures, including when they have not been completed. We propose adding the following: **"***Where necessary, the checks set forth under this Regulation may continue within the subsequent procedure.* ***In this case appropriate mention to the subsequent procedure will be made in the screening form*."**

Please note that for all the relevant provisions in Art. 13-14 connected with Art. 5, RO maintains the scrutiny reservation in respect to the screening within the territory.

Article 18 Amendments to Regulation (EU) 2018/1240

As pointed out during the Frontiers WP, RO considers that the *read only* access, provided for the ETIAS applications files stored in the Central system, should be also foreseen in the case of EES and VIS.

Furthermore, consistency should be kept between the new Art. 35a, para. 2, and Article 12 (5) for two reasons: the deadline and the use of both terms - *security threat* and *security risk*.

Secondly, at the new Art. 35a, para. 3 – if the suggestion to include ETIAS National Units at article 12, para. 6 is accepted, we are wondering whether it is more appropriate to include in the implementing act the issue covered at this paragraph.

Article 21

RO would like to thank the Presidency for introducing a transitional period in the text, but RO still considers that a two-year transition period is needed to allow sufficient time to implement this regulation.

SPAIN

As a general remark, the Spanish delegation maintains a scrutiny reservation on the whole text of the proposal.

The followings comments those made by the Spanish delegation at the working group meetings:

Article 7 - Monitoring of fundamental rights

ES places a substantive reservation on art. 7. Monitoring tools are already in place within the framework of specific regulations and procedures, with the aim of ensuring full respect of fundamental rights. Therefore, this provision is problematic since it overlaps with already existing mechanisms but also due to the specific nature of the screening. Considering the fact that the screening is not conceived as a procedure as such, any monitoring of this kind during the screening, included on eventual national restrictive measures or detention, are already in place in accordance with provisions laid down in national law.

Moreover, regarding the specific functioning and methodology of the mechanism, including the role of the FRA in this respect, this regulation should not prescribe it in detail nor go beyond what is already foreseen in specific regulations where a monitoring mechanism is provided for.

Article 8 - Provision of information

Regarding 8.1.b), we maintain a scrutiny reservation on the reference to the rights and obligations of third country nationals, subject to further compromise proposals from the Presidency on specific provisions to regulate this aspect.

Paragraph 2: substantive reservation.

As a general remark, provision of information should be regulated accordingly to the nature of the screening not being a procedure. Consequently, the list of elements migrants must be informed about (included in paragraph 2) should be limited, also in coherence with the provision in paragraph 1 that they "shall be succinctly informed". This list remains disproportionate by including cross references and info that is to be provided when relevant in the respective "procedures" to follow:

- In point b): previous wording was more appropriate, we would support reintroducing the reference to "where there are indication that they wish to apply for international protection", since this information is to be provided in those cases where the third country national is going to be referred to international protection procedure. Likewise, reference to art. 11 of the AMMR should be deleted since this information is to be provided once the TCN has been referred to the procedure for international protection and within the framework of such procedure:

*" b) **where there are indications that they wish to apply** for international protection, information on the obligation to apply for international protection in the Member State of first entry or legal stay set out in Article [9(1) and (2)] of Regulation (EU) No XXX/XXX [ex-Dublin Regulation] **and** the consequences of non-compliance set out in Article [10(1)] of that Regulation, **~~and the information set out in Article 11 of that Regulation as well as on the procedures that follow the making of an application for international protection~~**;"*

- Point d) should be deleted in coherence with art. 14.1 on the outcome of the screening (Those TCN who have not applied for international protection will be referred to the competent authorities to apply procedures respecting the return Directive). Information provided at this stage within the framework of the screening should be limited to that relevant in terms of the conditions of entry and stay in the EU and to the procedures of referral after the screening (return, international protection or relocation). In this sense, information on voluntary departure should be an element to be provided at a later stage and as part of the appropriate procedure:

~~"(d) the possibilities to enrol in a programme providing logistical, financial and other material or in-kind assistance for the purpose of supporting voluntary departure;"~~

- In point e): it should include a reference to relocation for those cases established in the Regulation on situations of crisis and force majeure:

"e) the conditions of participation in relocation in accordance with Article XX of Regulation (EU) No XXX/XXX [ex-Dublin Regulation] ***and in accordance with Article XXX of Regulation (EU) No XXX/XX (Regulation on situations of crisis) when applicable****;"*

- In point f): Information provided should be aligned with that facilitated in the framework of the relevant procedures (return or international protection), where a specific provision on Article 13 of GDP is not included. Therefore, we propose removing this point.

8.3 The reference to exceptional circumstances has been crossed out on this second round. A clear reference to maritime migration is necessary. The reference to oral information provided by interpretation services should be removed, since it creates a very specific obligation for the MS affected to solve a need that can be addressed otherwise.

We propose to remove art. 8.4 as it is not considered necessary and should be regulated by national law.

Article 9 - Health checks and vulnerabilities.

Scrutiny reservation on this article.

The main aim of this article is to provide for the adequate support in case where health needs or vulnerabilities are identified. In this regard, we consider this article should focus on aspects related to vulnerabilities, leaving aside any reference to "possible reception and procedural needs" since these are aspects to be identified and addressed within the adequate procedure, namely within the framework of the procedure for international protection.

"Article 9. Health checks and vulnerabilities.

(...)

*2. Where relevant, it shall be checked whether persons referred to in paragraph 1 are in a vulnerable situation****~~, and collect information on possible special reception or procedural needs.~~***

3. Where there are indications of vulnerabilities ***~~or special reception or procedural needs~~****, the third-country national concerned shall receive timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, and in cooperation with child protection authorities."*

Article 13 - Screening form.

Substantive reservation on this article, in relation with the form in Annex I.

Most items on paragraph 1 (Name date, place of birth, nationalities, countries of residence, and languages spoken) cannot be checked in case of undocumented migrants.

The info referred to on paragraph 2 can only be obtained if the person volunteers, since these interviews are not compulsory, something the new wording seems to recognize. However, this paragraph mixes personal data with info related to alleged crimes on point c) that it is confidential and has to be duly reported to the judiciary. For this reason, we propose its removal.

The newly introduced point d) is too wide and defined in such broad terms that is not considered appropriate, so we would suggest its removal.

Article 14 - Outcome of the screening.

Substantive reservation on this article.

In relation to the "refusal of entry" as an outcome of the screening (paragraph 1 and 7), it should be noted that entry may be refused only in the situations covered by art. 3.2 (asylum applications at external border crossing points or in transit zones). Therefore, in paragraph 1, the following wording should be amended:

«In cases ~~**not related to search and rescue operations**~~ **corresponding to article 3.2**, entry ~~**may**~~ **shall** be refused in accordance with Article 14 of Regulation 2016/399».

The above paragraph reflects the particularity of the situation of those arriving at our coasts as a result of SAR operations, as acknowledged during the working group discussions. We propose to re-introduce the references to SAR so far eliminated, and to stablish a particular regime for it out of the non-entry fiction, since these persons are rescued in MS national waters, arrive on MS boats to MS land territory, not to a BCP, and generally, with no ID documentation.

Paragraph 3:

For those cases where the screening is followed by relocation, the TCN should be referred to the relocation procedure. The screening form should be transmitted only to the relevant authorities of the benefitting MS responsible for the relocation procedure but not to the relevant authorities in the MS of relocation (for that purpose, the relocation form will provide the information deemed necessary):

"Where the third country national is to be relocated under the mechanism for solidarity established by Article XX of Regulation (EU) No XXXX/XXXX [Dublin Regulation], the third-country national concerned shall be referred to the ***procedure regulated in Article 57 of the Regulation (EU) No XXXX/XXXX [ex-Dublin Regulation]*** ~~***relevant authorities of the Member States concerned together with the form referred to in Article 13.***~~

Paragraph 5:

Need to clarify the reference to art. 25 of APR. We would propose deleting this paragraph and included these cases under paragraph 2 of the same article 14.

Paragraph 6:

The text should clarify that art.10 of the Eurodac regulation will only be applicable to cases under art.3.2 (asylum applications at external border crossing points or in transit zones).

Paragraph 7: in coherence with above comments, refusal of entry cannot be included as an outcome of the screening for TCN referred to in article 3(1) and 5:

*"Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum***, *~~refusal of entry~~* *or return, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure. Where necessary, the checks set forth under this Regulation may continue within the subsequent procedure."*

SWITZERLAND

Article 7

Switzerland welcomes the proposed modifications on article 7, especially the modified formulation of "to provide for an independent monitoring mechanism" instead of "to establish a mechanism", as it describes better the flexibility to use an existing body or mechanism to monitor the screening.

We remind that Switzerland is not legally bound by the EU Charter of Fundamental Rights. However, we also provide protection of fundamental rights and are committed to international human rights conventions, such as the European Convention on Human Rights.

Article 8

Regarding paragraph 2f, we remind that the reference to the General Data Protection Regulation is not binding for Switzerland, since it does not belong to the Schengen acquis. However, Swiss provisions ensure an adequate level of protection of personal data, which is recognized by the 2000 EU Declaration of Adequacy.

Article 9

We thank the Presidency for the explanations provided regarding the proposed deletion of paragraph 4. We support the interpretation that existing provisions regarding the health of third-country nationals under application of the return directive or asylum law are sufficient for the screening referred to in article 5 and therefore welcome the proposed deletion.

Article 11

Regarding paragraph 2, we remind that ECRIS-TCN does not belong to the Schengen acquis and Switzerland has no access to it. The access of Switzerland to Europol data is also limited to the extent of the Swiss-Europol operational Agreement.

Article 13

We remain skeptical about obliging Schengen states to use the specific form in Annex I. In our opinion, by allowing us to make use of existing forms, we could reduce the additional administrative burden and avoid the duplication of existing processes.

We would suggest to include the information on whether the person made an application for international protection in the list of essential information in paragraph 1 as it is decisive for the outcome of the screening.

Article 14

Regarding paragraph 2 as well as paragraph 5, we remind that the Asylum Procedure Regulation does not belong to the Dublin acquis and is not binding for Switzerland.

Regarding paragraph 3, we remind that the solidarity mechanism under the new Asylum and Migration Management Regulation does not belong to the Dublin acquis and is not binding for Switzerland.

Article 18

As already mentioned by the Commission at the last WP meeting, Art. 35a paragraph 2 should take into account two different deadlines (2 or 3 days) for the ETIAS National Unit to answer for the screening referred to in article 3 or in article 5, respectively for the screening at the external border and the screening within the territory.

Article 21

We remind that according to our Schengen association agreement, Switzerland will implement the Screening Regulation as a development of the Schengen acquis within 2 years from the notification on. In view of necessary adaptations of the national law for the implementation of this Regulation, it will need parliamentary approval and be subject to a possible referendum.

We therefore support the idea that not all Schengen and Member States need to start at the exact same time to fully implement this regulation.

Council of the European Union
General Secretariat

Interinstitutional files:
2020/0278(COD)

Brussels, 11 March 2021

WK 3497/2021 INIT

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MEETING DOCUMENT

From:	General Secretariat of the Council
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

Delegations will find enclosed a compilation of comments from MS on Articles 7-21 on the above proposal.