

**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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## AUSTRIA

### Article 4

The provision does not provide sufficient guarantees to effectively restrict the movement of persons subject to screening procedures. AT calls to strengthen the obligation to prevent onward movements and absconding.

For this purpose, AT proposes to introduce an explicit detention provision in a new Art 4a in the Screening Regulation. We observed that detention, despite being the “ultima ratio” has proven to be the most effective way to avoid secondary movements. For this reason, we propose a *lex specialis* to Art 4, setting out a clear framework for the use of detention in the screening procedure:

### Article 4a (new)

*1. Member States shall detain a person referred to in Article 3 in order to secure the screening process in line with Art. 9, 10 and 11 on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively when:*

*(a) there is a risk of absconding; and/or*

*(b) the third-country national concerned poses a risk to national security or public order.*

*2. Member States may detain a person referred to in Article 3 in order to prevent entry into the territory of a Member State on the basis of an individual assessment and only in so far as detention is proportional and other less coercive alternative measures cannot be applied effectively. The grounds for detention shall be laid down in national law.*

*3. Detention shall be for as short a period as possible and shall be for no longer than the deadlines applicable for the screening procedure in Art. 5.*

*4. Where a person is detained pursuant to this Article, the detention shall be ordered in writing by judicial or administrative authorities according to national law. The detention order shall state the reasons in fact and in law on which it is based.*

### Article 14(2)

It is important to foresee an option that the screening form can be referred to the relevant asylum authorities at any time. Therefore, AT proposes to change the wording of subpara 2: “As regards third-country nationals referred to in Article 3 (2), Article 3 (3) and Article 5, the form referred to in Article 13 of this Regulation, ~~once completed~~, shall be referred to the authorities mentioned in Article XY of Regulation (EU) No XXX/XXX [Asylum Procedure Regulation] as soon as possible but at the latest once the form is completed.”

## CZECHIA

### Article 1

We fully support the simplification of the text.

Furthermore, we propose revising the first paragraph to better reflect all categories of persons that will be screened. The current wording does not cover the situation when a person applies for international protection at the border crossing points - which might occur also during or after the border check.

Therefore, we propose:

*This Regulation establishes the screening of third country nationals who have not been subject to border checks at the external borders of the Member States **and of those who have made an application for international protection at external border crossing points without fulfilling entry conditions.***

In the second paragraph, we would like to better link the condition of not being subject to border checks at external borders to the persons illegally staying within the territory, therefore we propose:

*The purpose of the screening shall be strengthening of the control of persons who are about to enter the territory of the Member States, as well as of persons illegally staying within the territory of the Member States **and** who have not been subject to border checks at the external borders and their referral to the appropriate procedure.*

In the second sentence of the third paragraph, we propose to add “immediate” to align the provision with Article 9:

*“The screening shall also entail health checks, where appropriate, to identify persons vulnerable or in the need of **immediate** health care as well as the ones posing a threat to public health.”*

### Article 2

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

### Article 3a

Paragraph 1 a) – the specific number of the Asylum Procedure Regulation shall be added following its adoption. Therefore, we propose adding “(…)” after the reference to the “Asylum Procedure Regulation”.

Paragraph 2 – the words “Without prejudice to the application of provisions on international protection” shall be deleted as the relation to asylum provisions is covered by para 1.

## **Article 6**

CZ raises concerns regarding newly added wording in paragraph 6 letter a) „unless qualified medical staff consider it as not necessary“ as it implies pre-health checks in all cases.

## **Article 6a**

We very much welcome this new provision.

Furthermore, we believe that other proposals (RCD, APR and RD, may be others?- Crisis Regulation?) shall react to non-cooperation or absconding and shall refer specifically to Screening Regulation duties. We mean referring in the new Return Directive and specific reasons for automatic application of risk of absconding. In case of asylum seekers, link in the Asylum Procedures Regulation to reasons for accelerated procedure (or may be even more ambitious steps) and finally link in the RCD for possible lowering of material benefits during asylum procedure.

## FINLAND

### Article 1(3)

Drafting suggestion (adding registration, which is a key component of screening): The ~~object~~ *objective* of the screening shall be the **registration and** identification of all third-country nationals subject to it and the verification against relevant databases that ~~the~~ *those* persons ~~subject to it~~ do not pose a *security risk*.

### Article 2 Definitions (and art 11(3) security check)

- It is proposed that the **screening regulation** would contain a definition of a "*serious criminal offence*".
- FI would like to point out that **FI objects to the idea of adding the definition of a "*serious criminal offence*" to the definitions in relations to the ECRIS-TCN Regulation as it is problematic.** 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 2(12)

Regarding the definition of vulnerable persons, the use of the list is somewhat problematic. With different regulations applying the term we run the risk that if some of the other regulations during negotiations opt for a different approach we would have different meanings for vulnerable persons. Vulnerability should be assessed individually and as a whole and not according to separate factors. In the negotiations of the return directive the council is going towards a compromise of suggesting to change this list open ended. **Therefore, we suggest to opt for a reference to other legal instruments, like the return directive do we would have the same definition despite what is the outcome of return directive negotiations.**

### Article 3

We appreciate what the PCY has been trying to achieve here and we feel after hearing the explanations of the PCY on the application of SBC art 6(5)(c) and the current wording in art 3. **We could consider adding to the recitals** that in cases where there is a clear intent from the rescued person to fulfill the entry conditions with the help of their consulate or representation the screening should not be finalized (EURODAC registration etc.) until there is indication that this sort of outcome is not forthcoming. Adding the notion from the ECJ decision 329/11 is also supported.

## **Article 6(6)a**

This comment is without prejudice to art 9 which the PCY is still preparing. The full picture is available only when we see art 9. We support the notion that a law enforcement officer has certain experience in evaluating the state (physical and mental) of a customer. In addition, all circumstances at the border are not alike. **Therefore, we would like to see room for consideration in this regard.** A health check could be mandatory in situations of SAR disembarkations and migratory pressure. In other circumstances the officer could make the assessment with some safeguards. These safeguards would be a telemedical consultation by phone or VTC of a medical expert and/or a reasoned request by the person subject to screening. Applying a compulsory health check would be an enormous burden on our resources especially in scarcely populated areas where a drive to a “local” medical facility would take several hours and keep the committed patrol, usually the only patrol in the area, occupied for hours at a time. Due to the small amount of cases a permanent employment of such medical person would also be out of the question. **As this is was an issue raised by several delegation we hope that the PCY takes duly note of our concern.**

The proposed wording by the PCY suggests that the “not necessary” consideration would apply to vulnerability check as well. In our view it should only refer to the health check portion.

## FRANCE

### **Au sujet de l'article 1 concernant l'objet**

Nous remarquons que la première phrase limite l'objet du règlement de manière discordante avec son champ d'application.

En effet, elle prévoit que "Le présent règlement établit le contrôle des ressortissants de pays tiers qui n'ont pas été soumis à des contrôles aux frontières extérieures des États membres".

Cela réduit le périmètre du screening aux personnes qui ne se présentent pas à un point de passage frontalier (PPF). Pourtant, le règlement s'applique aussi aux personnes qui demandent l'asile aux PPF (cf champ d'application article 3§2) et sont donc soumises aux dits contrôles. Les autorités françaises proposent donc la formulation suivante:

«This Regulation establishes the screening of third country nationals who have not been subject to border checks at the external borders of the Member States **and those who have made an application for international protection at external border crossing points or in transit zones and who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399**».

### **Au sujet de l'article 4 relatif à l'autorisation d'entrer sur le territoire d'un Etat membre**

S'agissant du paragraphe 1, les autorités françaises regrettent que la rédaction de compromis proposée ne reprenne pas la proposition française selon laquelle les personnes doivent être maintenues ("kept").

Selon elles, la rédaction actuellement proposée dans la proposition de compromis ne permet pas d'assurer l'effectivité du maintien à la frontière et de la fiction de la non-entrée et limite la portée du règlement screening, pourtant essentiel au renforcement des frontières extérieures de l'Union. Elles souhaitent donc que l'obligation des Etats membres de maintenir les personnes dans un lieu dédié à proximité de la frontière soit clairement établie, sans qu'il soit nécessaire de définir des règles communes relatives à la rétention à la frontière (car elles sont déjà encadrées par la CEDH et la Charte des droits fondamentaux). Cette privation de liberté lors du screening est indispensable à l'équilibre solidarité/responsabilité du Pacte et à l'efficacité des procédures d'asile et de retour à la frontière.

Par ailleurs, le compromis proposé ne différencie pas la rédaction des articles 4 et 5 (relatif au screening sur le territoire). Une telle absence de différenciation ne permet pas de mettre en exergue et prendre en compte la spécificité des contrôles opérés aux frontières extérieures, par rapport à la situation au sein du territoire. L'article 5§1f) de la CEDH permet aux Etats parties de priver de liberté les personnes pour les "empêcher de pénétrer irrégulièrement sur le territoire" Le règlement screening devrait tenir compte de cette spécificité, qui est cohérente avec les dispositions du CFS et de la directive retour. La rédaction de l'article 5 pourrait être conservée dans sa rédaction actuelle.

En conséquence, les autorités françaises proposent de nouveau de remplacer le terme «remain» par «kept». Il convient ici de souligner que ce terme est également proposé par la Commission dans la proposition de règlement relatif aux procédures d'asile (APR) et qu'il n'y a aucune raison d'employer une terminologie différente, plus évasive et plus souple concernant le screening.

Les autorités françaises soulignent que la rédaction qu'elles proposent est cohérente avec l'acquis Schengen existant en ce qu'elle permet d'étendre l'obligation prévue par l'article 14 §4 du code frontières Schengen aux personnes qui franchissent la frontière irrégulièrement et doivent être « filtrées » avant d'être orientées vers les procédures d'asile, de retour ou un refus d'entrée.

La rédaction de l'article 4 §1 proposée par la Présidence n'étant pas aussi stricte que celle de l'article 14 §4 CFS qui impose une action de l'Etat membre («The border guards **shall ensure that a third-country national refused entry does not enter the territory of the Member State concerned**»), il conviendrait de renforcer l'obligation des Etats membres de garantir que la personne n'entre pas sur le territoire avant la fin du screening.

Les autorités françaises proposent donc la rédaction suivante:

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

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

Afin de prendre en compte les réticences de certaines délégations relatives à l'absence d'encadrement de la privation de liberté dans le cadre du screening, les autorités françaises peuvent envisager d'ajouter cette phrase de complément:

**[Persons referred to in Article 3, paragraphs 1 and 2 shall have the right to an effective remedy to challenge the lawfulness of his/her deprivation of liberty in accordance with national law]**».

Toutefois cet ajout pourrait également trouver sa place dans les considérants du règlement ou intervenir au stade des trilogues comme l'ont proposé la Commission et la Présidence.



## POLAND

### Article 1

The current proposal makes the initial para of art. 1 contradictory with art. 3.2, as third country nationals who apply for international protection at BCPs at external border are considered (from a legal standpoint) to be subject of border control. Therefore this category cannot be left out of art. 1.

Poland proposes to amend the provisions as follows:

#### Option 1

This Regulation establishes the screening of third country nationals **as indicated in art. 3 and art. 5 who have not been subject to border checks at the external borders of the Member States.**

#### Option 2

This Regulation establishes the screening of third country nationals who have not been subject to border checks at the external borders of the Member States **or who applied for international protection during border checks without fulfilling entry conditions.**

### Article 6.6a

The current provision indicates that qualified medical personnel will always have to be present during screening. It does not seem necessary that qualified medical personnel should be present in all cases.

Poland proposes to amend the provisions as follows:

The screening shall comprise the following mandatory elements:

- (a) preliminary health and vulnerability check as referred to in Article 9, ~~unless qualified medical staff consider it as not necessary;~~

### Article 6a

(ewent.) In our opinion, the assessment of the cooperation of the third country nationals should be taken into account at a further stage within the adequate border procedure (the cooperation or lack thereof should therefore be recorded in the screening form).

### Article 9 Amendment

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 result of the preliminary health check and** 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 direct the third country national to a preliminary medical screening performing by qualified medical staff** ~~In that case, they shall inform those persons accordingly.~~

## ROMANIA

### Article 1 – Subject matter

#### **Para 2: Scrutiny reservation in view of the references to screening within the territory.**

**Para 3:** At the last sentence, observation previously submitted in connection with the *checks carried out during the screening*, RO proposes to replace the term checks, used in this article with reference to *border checks and health checks*, with **tasks** (also used in the definition of screening), to refer to the result of all verifications performed during the screening: *Those checks tasks shall contribute to referring such persons to the appropriate procedure.*

### Article 2 – Definitions

At point 13 RO appreciates and supports the inclusion of a definition of screening authorities in the proposed revised text, and while understanding the need to respect the competencies of the MS in designating the respective authorities, as explained during the meeting, it should be kept in mind that 1) this is a proposal for a regulation, not a directive; 2) it should guide the MS in appointing the screening authorities, not confusing them by using *tasks* in said definition, when this word is used in the proposal with regards to the qualified medical staff in article 6, and 3) we should be consistent: the same perspective followed in other regulations (such as the EES, ETIAS, SIS, defining authorities in relation to a relevant European legal framework or to the types of activities carried out by those authorities) should be used here.

Therefore, RO considers that the proposed definition of the *screening authorities* **does not provide enough details to ensure a uniform application**, will require **additional national legislation** (lasting a long period to adopt) and will pose problems in implementation at national level, given the **need to avoid overlapping of competencies / institutional roles**.

Thus, bearing in mind recital 21 of the proposal, RO suggest the following: ***‘screening authorities’ means all competent authorities designated by national law to carry out one or more of the following tasks under this Regulation: border control, preventing, investigating or countering illegal migration, asylum or return procedures, anti-trafficking, child protection or medical activities.***

At point 14, given the provisions of art. 3 (b) of the EBCG Regulation 1896/2019, RO is proposing the following text: ***‘Search and Rescue Operations’ means operations of search and rescue carried out in accordance with Regulation (EU) No 656/2014 or with ~~as referred in~~ the 1979 International Convention on Maritime Search and Rescue adopted in Hamburg, Germany on 27 April 1979, taking place in situations which may arise during border surveillance operations at sea.***

### Article 3 – Screening at the external border

**Para 1:** the separation of the phrase „*and do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399*” should apply to both situations (letters a and b), but putting it separately could induce confusion about the applicability. Therefore we propose the following rewording: ***”This Regulation shall apply to all third-country nationals who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399, regardless of whether they have made an application for international protection, who...”***

**Para 2:** given that persons who apply for protection at the border crossing point or in the transit area and who do not meet the entry conditions are a distinct category, we consider it necessary to reflect it in the phrase „shall **also** apply”.

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

Given the regulatory nature of the proposal, with binding legal force (regulation) and the sensitivity of the matter, with a view to observing the principle of subsidiarity, RO considers not appropriate leaving it to the national legislation to regulate and supports a clear text, to indicate that screened persons are kept in designated locations in a closed regime throughout the process, in order to prevent any risk of absconding. The same goes for Article 5, including the deletion of references to the national law of provisions. In application of the above:

**Para 1:** According to art. 41 and 41a of current APR proposal, the TCN subject to the asylum border procedure and return border procedure shall not be authorized to enter the territory of the Member State. RO considers that, in order to respect the non-entry legal fiction (which in our understanding is not only linked with screening, but also with the subsequent procedures) consistency between Screening Regulation and APR should be ensured, as regards the options that Member States have at their disposal to prevent the risk of absconding. In this respect, we are open to further explore FR proposal regarding the addition in para. 1 of a wording similar to art. 41 and 41a of the APR: *”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 **and shall be kept at or in proximity to the external border or transit zones** / alternatively **and shall be kept in designated closed facilities for the entire process, in order to prevent any risk of absconding.**”*

In the same vein, RO proposes deleting the second phrase, for the reasons mentioned above: *”Member States shall lay down in their national law provisions to ensure that those persons remain at the disposal of the competent authorities for the duration of the screening to prevent any risk of absconding.”*

**Para 2:** RO doesn't consider it necessary to list the countries in which the person may leave voluntarily, it is enough to mention them leaving the territory of the Member States. Alternatively, we propose to include a reference to art 3 (3)<sup>1</sup> of the Return Directive 115/2008: *”The screening may also be discontinued when the third country national leaves the territory of the Member States, ~~for the country of origin, residence or another third country they are accepted to which the third country national concerned voluntarily decides to return and where he or she is accepted~~”*.

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<sup>1</sup> return' means the process of a third-country national going back — whether in voluntary compliance with an obligation to return, or enforced — to:  
— his or her country of origin, or

— a country of transit in accordance with Community or bilateral readmission agreements or other arrangements, or

— another third country, to which the third-country national concerned voluntarily decides to return and in which he or she will be accepted;

## Article 5 – Screening within the territory

RO maintains the **scrutiny reservation on this article**. In connection with this article, the remarks in the introductory part, concerning the new recital 18a)<sup>2</sup>, RO notes that this new recital **will pave the way for a new, unfounded imbalance between MS that fully implement the Schengen acquis and those that do not fully implement the Schengen acquis**. In the light of the explanations provided during the meetings, it remains **unclear why it is necessary to individualize MS whose controls at internal borders have not been eliminated**, since the intention was to emphasize the applicability of the specific procedures art. 5 with regard to cases detected at internal borders. **It doesn't matter whether the border controls have been eliminated or not, the specification should be generally applicable, as is the definition of internal borders provided for by article 2 point 1 of the Schengen Borders Code.**

RO requests the deletion of the last part of the sentence of the proposed recital 18a)... *apprehended in connection with unauthorised crossing of internal land borders of the Member States ~~where the controls have not yet been lifted.~~*

**Para 2:** For clarity reasons, RO proposes the following redrafting of the second paragraph of article 5: *„~~Member States may refrain from applying the screening in accordance with paragraph 1~~ **If a third-country national staying illegally on the territory of a Member State is taken back by another Member state under bilateral agreements or arrangements, in such a case the Member State which has taken back apprehended the third country national concerned shall apply paragraph 1**”.*

In RO opinion, such a change is necessary for the following reasons:

- the competent authorities of the MS retaining a TCN in connection with the unauthorized crossing of the internal land border of the Member States are already carrying out health and vulnerability checks, identity checks consulting EU databases, security check using EU and national databases, as well as verifications on the factual situation (to establish the modality of illegal crossing, obtaining information related to the route used, the persons involved). This information is necessary to obtain evidence for the return of the persons concerned, on the basis of bilateral agreements.
- thus, most screening activities are already carried out by the Member State retaining a TCN in connection with the unauthorized crossing of the internal land border of the Member States, therefore, the inclusion of provisions on mandatory screening by the Member State in which the TCN is returned will lead to inefficiency and duplication of activities, as both states will be conducting related checks.

In this context, RO considers that an added value can be brought if the screening is carried out by the MS which apprehends a TCN in connection with the unauthorized crossing of the internal border and not by the one in which he/she is returned based on bilateral cooperation documents.

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<sup>2</sup> "Member States should apply the provisions on screening within the territory to third country nationals apprehended in connection with unauthorised crossing of internal land borders of the Member States where the controls have no yet been lifted. **Screening conducted in these cases shall follow the rules established by this Regulation for screening within the territory and not the rules established for screening at the external borders.**" "

## **Article 6 – Requirements concerning the screening**

**Para 5:** RO still considers that a longer period of time is needed to carry out screening in the territory. Therefore, we propose to complete para 5, as follows: *In exceptional circumstances, where a disproportionate number of third-country nationals needs to be subject to the screening at the same time, making it impossible in practice to conclude the screening within that time-limit, the period of 3 days may be extended by a maximum of an additional 3 days.*

**Para 7:** RO proposes to replace “National child protection authorities” with “Competent child protection authorities”, in order to avoid being understood as referring to the authorities with regulatory and strategy role.

## **Article 6a – Obligations of third country nationals submitted to screening**

**Para 2:** RO considers it necessary to include the obligation of the aliens to undergo medical examination. Therefore, we propose the introduction of letter c), with the following form: *by complying with the health assessment.*

## SLOVENIA

### Article 1

#### *Subject matter and scope*

This Regulation establishes the screening **of third country nationals who have not been subject to border checks at the external borders of the Member States** ~~of all third country nationals who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by land, sea or air of the external border of a Member State~~ and have crossed the external border in an unauthorised manner, ~~of those who have applied for international protection during border checks without fulfilling entry conditions~~, as well as those disembarked after a search and rescue operation, before they are referred to the appropriate procedure.

The purpose of the screening shall be the strengthening of the control of persons who are about to enter the **territory of the Member States**, ~~Schengen-area~~ **as well as of persons illegally staying within the territory of the Member States and who have not been subject to border checks at the external borders** and their referral to the appropriate procedures.

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

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

*Article 2*  
*Definitions*

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

1. ‘unauthorised crossing of the external border’ means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. ‘threat to public health’ means a threat to public health within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. ‘verification’ means the process of comparing sets of data to establish the validity of a claimed identity (one-to-one check), **as referred to in Article 3 (1) (13) of the EES Regulation (EU) 2017/2226;**
4. ‘identification’ means the process of determining a person’s identity including through a database search against multiple sets of data (one-to-many check), **as referred to in Article 3 (1) (14) of the EES Regulation (EU) 2017/2226;**
5. ‘third-country national’ means any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a person enjoying the right to free movement under Union law within the meaning of Article 2 Point 5, of Regulation (EU) 2016/399;
6. *‘security risk’ means the risk of a threat to public policy, internal security or international relations for any of the Member States, as referred to in Article 3 (1) (6) of the ETIAS Regulation (EU) 2018/1240;*
7. ‘terrorist offence’ means an offence under national law which corresponds or is equivalent to one of the offences referred to in Directive (EU) 2017/541, as referred to in Article 3 (1) (24) of the EES Regulation (EU) 2017/2226;
8. ‘serious criminal offence’ means an offence which corresponds or is equivalent to one of the offences referred to in Article 2(2) of Council Framework Decision 2002/584/JHA, if it is punishable under national law by a custodial sentence or a detention order for a maximum period of at least three years, as referred to in Article 3 (1) (25) of the EES Regulation (EU) 2017/2226;
9. ‘Europol data’ means personal data processed by Europol for the purpose referred to in Article 18(2)(a), ~~(b) and (c)~~ of Regulation (EU) 2016/794, as referred to in Article 3 (1) (17) of the ETIAS Regulation (EU) 2018/1240;
10. *‘biometric data’ means fingerprint data or facial images or both, as referred to in Article 4 (11) of the Interoperability Regulation (EU) 2019/817;*
11. *‘Interpol databases’ means the Interpol Stolen and Lost Travel Document database (SLTD database) and the Interpol Travel Documents Associated with Notices database (TDAWN database) as referred to in Article 4 (17) of the Interoperability Regulation (EU) 2019/817;*

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

### *Article 3*

#### *Screening at the external border*

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

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

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

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

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

### *Article 3a - NEW*



### *Relation with other legal instruments*

1. For third-country nationals subject to the screening referred to in Article 3(1) (a) and (b),
  - a) the *registration of the asylum application in accordance with of the common procedures of the Asylum Procedures Regulation is determined by Article 26(3) and Article 27(5) of that Regulation*
  - b) the application of the common standards for the reception of applicants for international protection of the Reception Conditions Directive (...) is determined by Article 3(x) of that Directive.
2. Without prejudice to the application of provisions on international protection, ~~Return~~ Directive 2008/115/EC or national provisions respecting Directive 2008/115/EC shall apply only after the screening has ended, except for the screening referred to in Article 5.

### *Article 4*

#### *Authorisation to enter the territory of a Member State*

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

**Member States shall lay down in their national law provisions to ensure that those persons remain at the disposal of the competent authorities for the duration of the screening to prevent any risk of absconding.**
2. Where it becomes apparent during the screening that the third-country national concerned fulfils the entry conditions set out in Article 6 of Regulation (EU) 2016/399, the screening shall be discontinued and the third-country national concerned shall be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5 (3) of that Regulation.

**The screening *may* also be discontinued when the third country national leaves voluntarily the territory of the Member States, for the country of origin, residence or another third country where they are accepted.**

### *Article 5*

#### *Screening within the territory*

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

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

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

*Article 6*

*Requirements concerning the screening*

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

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

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

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

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

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

#### **Article 6a - NEW**

##### ***Obligations of third country nationals submitted to screening***

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

## **SLOVAKIA**

### **Article 3**

In this article we see some discrepancies. In art. 1 as a subject matter is written *third country nationals who have not been subject to border checks at the external borders of the Member States*. This doesn't correspond to art. 3 b) which is in contradiction to art 1. If in art. 1 we say that the subject matter *are TCNs who have not been subject to border checks*, and in art 3 b we change it that *they are TCN who do not fulfill the entry conditions*, which we will find out only by conducting border checks, whether they fulfil or not.

We are of the opinion that para a) covers also situation indicated in para b), as in para a) is specifically mentioned also sea border.

Therefore we do not see a need of having separate para for SAR.

### **Article 2**

As a consequence of above mentioned deletion of art. 3 (b) we suggest deletion of point 14 *Search and rescue operations*.

## **SWEDEN**

### **Article 2**

We welcome the new amendments.

### **Article 3**

We took note of the presidency explanation that the wording “regardless of whether they have applied for international protection” is added not because it adds value, but it serves as an explanation. We can accept the wording as it stands.

### **Article 4**

We support the article as presented by the presidency and we would prefer not to specify this article further. It is important that MS are given the possibility to use and sort the screening under existing national laws and regulations.

### **Article 5**

The added wording at the end of para 1 only serves a purpose if it is possible for the authorities to establish that the person in front of them has been screened before. It is therefore important that we continue to discuss how we can share such information in an easy and effective way. It seems that using Eurodac is not a perfect option since it only establishes that a person has been involved in screening, but not that it has been concluded.

During the meeting we asked whether it could be stated in a clear way that the screening of a person should be discontinued if it becomes apparent that she or he has the right to stay in the territory. The presidency informed us kindly that the screening was only applicable to persons not fulfilling the entry conditions making such amendment unnecessary. Would not the same reasoning be applicable for article 4 para 2 making it superfluous? We argue that a similar para to that of article 4.2 could be useful under article 5.

### **Article 6**

We support the added wording under para 1.

The new wording under para 7 is, however, problematic for us. We understood that MS shall designate a [Public] Health Authority or similar to become a screening authority. In Sweden the Public Health Authority is an administrative authority and they do not employ doctors and nurses for operative purposes. We are not able to make use of hospitals and such since they are not formally authorities in Sweden. We believe it is important that the article allow MS to be flexible and adapt to national conditions. Therefore, we would like a change of the wording as follows, since as it stand at the moment we cannot fulfil the regulation:

“Member states shall ensure that ~~the screening authority includes~~ qualified medical staff to carry out the assessment and the health check/.../”

We are more than happy to further explain our case if needed.

## Article 6a

We would welcome an amendment of para 1 of article 6a as follows:

The third country nationals subject to screening shall remain, for its duration, at the disposal of the screening authorities, in the locations ~~designated for that purpose~~ **referred to in article 6 paragraph 1 and 2.**

The reason for this amendment is that the wording, as it was prior to the introduction of the article 6a, allowed for screening under article 5 to be performed at “any appropriate location”. The wording in article 6a, especially the use of singular and also the use of the word “designate” can easily be understood as a single place for the screening to be performed at. It can also be understood as a place that has to be formally appointed beforehand (just as designated screening authorities means formally appointed authorities). We would rather see that there is an option to perform the screening where appropriate and to have the possibility to move the person subject to screening.

Let us say the Police Authority apprehends a person within the territory, it could be along the highway or in connection to a crime. They begin checking this person and when finding that he or she is illegally present on the territory they quickly move on to begin the screening, still at the location of apprehension. Then further into the screening they might want to move the person subject to screening and continue elsewhere. However, with the wording “in the location designated for that purpose” in article 6a it now seems impossible to begin the screening at an early stage after apprehending the person. It can be understood that the person has to be moved to a location formally designated beforehand.

We would also welcome an amendment on article 6a on the consequences of not cooperating during screening, or at least including a part in the screening form where it could be registered if the screening subject was, or was not, cooperating during the screening.

## **SWITZERLAND**

### **Article 5**

For Switzerland it is important to clarify the question brought forward during the discussion about the application of bilateral readmission agreements between two Schengen states.

We support the interpretation of the Presidency that a facilitated return of a third-country national to another Member State according to a bilateral agreement could precede the screening. The purpose of the Screening Regulation is to check the identity of irregular migrants, not of persons who can be brought back under bilateral agreements. Switzerland has bilateral agreements with its neighbouring states that allow for simplified or prompt returns at our internal borders under certain conditions. We therefore also support a clarification in this sense in the text, as proposed by the Presidency in its newest compromise proposals. However, we would prefer to replace "may" with "should". In our opinion, this would make the regulation clearer.

So far, we understood that the screening according to article 5 has to be conducted if there is no indication that someone has not entered in an authorized manner – regardless if this person is asking for international protection. However, by having replaced “present” by “illegally staying”, one could argue that an asylum seeker is not illegally staying and therefore must not be screened. We would therefore welcome clarification at the next counsellor meeting, whether article 5 applies regardless if a person is seeking international protection.

While we understand the principle that the same checks should not be done twice, we think the proposed addition “*MS shall apply the screening (...) where there is no indication that (...) they have already been subjected to screening in a Member State.*” could be understood as a right of an individual not to be screened when he or she has already been screened at some point before. As there might be cases, in which a MS would like to have the possibility to screen this person nonetheless, for example if not all the information have been collected at the previous screening, or if the screening took place years ago and the security risk might have changed, we would be in favour of keeping the possibility to perform a screening in these cases.

### **Article 6**

Paragraph 6 a: What is the difference between considering the necessity of a health check by a qualified medical staff, and the preliminary health check itself? Both seem to be checks done by medical staff in order to determine the existence of potential health issues and vulnerabilities. We therefore agree with the newest compromise proposals of the Presidency.

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