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From: Presidency  
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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

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In view of the Informal VTC of the JHA Counsellors (Frontiers) meeting on 19 May 2021, delegations will find enclosed a Presidency compromise proposal. This document contains an amended text of the recitals of the Proposal for a Regulation of the European Parliament and of the Council introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817.

Changes to the original text (as contained in document ST 11224/20) have been placed in **bold** or marked with ~~strikethrough~~.

2020/0278 (COD)

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**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular points (b) and (d) of Article 77(2) thereof

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) The Schengen area was created to achieve the Union's objective of establishing an area without internal ~~frontiers~~ **borders** in which the free movement of persons is ensured, as set out in Article 3(2) of the Treaty on European Union (TEU). The good functioning of this area relies on mutual trust between the Member States and efficient management of the external border.

- (2) The rules governing border control of persons crossing the external borders of the Member States of the Union are laid down in Regulation (EU) 2016/399 of the European Parliament and of the Council (Schengen Borders Code)<sup>1</sup> as adopted under Article 77(2)(b) of the Treaty on the Functioning of the European Union (TFEU). To further develop the Union's policy with a view to carrying out checks on persons and efficiently monitoring the crossing of external borders referred to in the first paragraph of Article 77 TFEU, additional measures should address situations where third-country nationals manage to avoid border checks at the external borders **in accordance with Article 5(1) of Regulation (EU) 2016/399**, or where third-country nationals are disembarked following search and rescue operations as well as where third-country nationals ~~request~~ **make an application for** international protection at a border crossing point without fulfilling entry conditions, **and third country nationals who make an application for international protection and benefit from an authorisation to enter on humanitarian grounds or international obligations under Article 6(5)c of Regulation (EU) 2016/399**. The present regulation complements and specifies Regulation (EU) 2016/399 with regard to those three sets of situations.
- (3) It is essential to ensure that in those three sets of situations, the third country nationals are screened, in order to facilitate a proper identification and to allow for them being referred efficiently to the relevant procedures which, depending on the circumstances, can be procedures for international protection or procedures respecting Directive 2008/115/EC of the European Parliament and of the Council (the "Return Directive")<sup>2</sup>. The screening should seamlessly complement the checks carried out at the external border or compensate for the fact that those checks have been circumvented by the third country nationals when crossing the external border.
- (4) Border control is in the interest not only of the Member States at whose external borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal migration, **smuggling** and trafficking of human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations. As such, measures taken at the external borders are important elements of a comprehensive approach to migration, allowing to address the challenge of mixed flows of **irregular** migrants and persons ~~seeking~~ **in need of** international protection.

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<sup>1</sup> Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), OJ L 77, 23.3.2016, p.1.

<sup>2</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p. 98.

- (5) In accordance with Article 2 of Regulation (EU) 2016/399, border control consists of border checks carried out at the border crossing points and border surveillance, which is carried out between the border crossing points, in order to prevent third-country nationals **from border crossing not authorised under Article 5 of Regulation (EU) 2016/399 and thereby** circumventing border checks. In accordance with Article 13 of Regulation (EU) 2016/399 a person who has crossed a border in an unauthorised manner and who has no right to stay on the territory of the Member State concerned shall be apprehended and made subject to procedures respecting Directive 2008/115/EC. In accordance with Article 3 of Regulation (EU) 2016/399, border control should be carried out without prejudice to the rights of refugees and persons requesting international protection, in particular as regards non-refoulement.
- (6) Border guards are often confronted with third-country nationals who are requesting international protection without travel documents, both following apprehension during border surveillance and during checks at the border crossing points. Moreover, at some border sections the border guards are confronted with ~~large numbers of arrivals~~ **mass influx of people** at the same time. In such circumstances, it is particularly difficult to ensure that all relevant databases are consulted and to immediately determine the appropriate asylum or return procedure.
- (7) In order to ensure a swift handling of third-country nationals **at the external borders or within the territory of the Member States, who have not been subject to border checks at the external borders of the Member States, as well as those who have made an application for international protection at border crossing points or in transit zones, without fulfilling the entry conditions** ~~who try to avoid border checks or who request international protection at a border crossing point without fulfilling the entry conditions or who are disembarked following a search and rescue operation,~~ it is necessary to provide a stronger framework for cooperation between the different national authorities responsible for border control, the protection of public health, the examination of the need for international protection and the application of return procedures.
- (8) In particular, the screening should ~~help~~ **contribute** to ensure that the third-country nationals concerned are referred to the appropriate procedures at the earliest stage possible and that the procedures are continued without interruption and delay. At the same time, the screening should ~~help~~ **contribute** to counter the practice whereby ~~some~~ applicants for international protection abscond ~~after having been authorised to enter the territory of a Member State based on their request for international protection,~~ in order to pursue such ~~requests~~ **applications** in another Member State or not at all.
- (9) With regard to those persons who apply for international protection, the screening should be followed by an examination of the need for international protection. It should allow to collect and share with the authorities competent for that examination any information that is relevant for the latter to identify the appropriate procedure for the examination of the application, thus speeding up that examination. The screening should also ensure that **vulnerable** persons ~~with special needs~~ are identified at an early stage, so that any special reception and procedural needs are fully taken into account in the determination of and the pursuit of the applicable procedure.

- (10) The obligations stemming from this Regulation should be without prejudice to the provisions concerning responsibility for examining an application for international protection regulated in Regulation (EU) No XX/XXX [Asylum and Migration Management Regulation].
- (11) This Regulation should apply to third-country nationals and stateless persons who are apprehended in connection with the unauthorised crossings 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 the Eurodac Regulation for reasons other than their age, as well as to persons who have been disembarked following search and rescue operations, regardless of whether they apply or not for international protection. This Regulation should also apply to those who seek international protection at the border crossing points or in transit zones without fulfilling the entry conditions.
- (12) The screening should be conducted at ~~or in proximity to~~ the external border **or, when this is not possible because there are no adequate facilities at the border or they are already occupied, in other locations**, before the persons concerned are authorised to enter the territory. The Member States should ~~apply measures pursuant to~~ **lay down in their national law provisions to ensure to prevent the persons concerned are effectively prevented** from entering the territory **or absconding and to ensure these persons remain in the designated location** during the screening. In individual cases, where required, this may include detention, **as well as other alternative measures that can ensure the same objective**, subject to the national law regulating that matter. **Detention should always be necessary, proportionate and subject to an effective remedy, in line with EU and international law.**
- (13) Wherever it becomes clear during the screening that a third-country national subject to it fulfils the conditions of Article 6 of Regulation (EU) 2016/399, the screening should end and the third-country national concerned should be authorised to enter the territory, without prejudice to the application of penalties as referred to in Article 5(3) of that regulation.
- (14) In view of the purpose of the derogation referred to in Article 6(5) of Regulation (EU) 2016/399, persons whose entry has been authorised by a Member State under that provision in an individual decision should not be submitted to the screening despite the fact that they do not fulfil all entry conditions, **unless they make an application for international protection.**
- (15) All persons subject to the screening should be submitted to checks, **including, where appropriate, interviews**, in order to establish **or verify** their identity and to ascertain that they do not pose a ~~threat to internal security or public health~~ **security risk or a threat to public health**. In the case of persons ~~requesting~~ **making an application for** international protection at border crossing points, the identity and security checks carried out in the context of border checks should be taken into account to avoid duplication.

- (16) On completion of the screening, the third-country nationals concerned should be referred to the relevant procedure to establish responsibility for examining an application for and to assess the need for international protection **respecting the [Regulation establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU]**, or be made subject to procedures respecting **recast** Directive 2008/115 (return directive), as appropriate. ~~The relevant information obtained during the screening should be provided to the competent authorities to support the further assessment of each individual case, in full respect of fundamental rights. The procedures established by Directive 2008/115 should start applying only after the screening has ended. Article 26 and 27 of the Asylum Procedures Regulation should apply only after the screening has ended. This should be without prejudice to the fact that the persons applying for international protection at the moment of apprehension, in the course of border control at the border crossing point or during the screening, should be considered applicants.~~
- (17) The screening could also be followed by relocation under the mechanism for solidarity established by Regulation (EU) XXX/XXX [Asylum and Migration Management] where a Member State is contributing to solidarity on a voluntary basis or the applicants for international protection are not subject to the border procedure pursuant to Regulation (EU) No. XXX/XXX (Asylum Procedures Regulation), or under the mechanism addressing situations of crisis established by Regulation (EU) XXX/XXX [Regulation on situations of crisis].
- (18) In accordance with Article 12 of Regulation (EU) 2016/399, the fulfilment of entry conditions and the authorisation of entry are expressed in an entry stamp in a travel document. The absence of such entry stamp or the absence of a travel document may therefore be considered as an indication that the holder does not fulfil the entry conditions. With the start of the operation of the Entry/Exit System leading to substitution of the stamps with an entry in the electronic system, that presumption will become more reliable. Member States should therefore apply the screening to third-country nationals who are already within the territory and who are unable to prove that they fulfilled the conditions of entry into the territory of the Member States. The screening of such third-country nationals is necessary in order to compensate for the fact that they presumably managed to evade entry checks upon arrival in the Schengen area and therefore could have not been either refused entry or referred to the appropriate procedure following screening. Applying the screening could also help in ascertaining, through the consultation of the databases referred to in this Regulation, that the persons concerned do not pose a ~~threat to internal security~~ **security risk**. By the end of the screening within the territory, the third-country nationals concerned should be subject to a return procedure or, where they apply for international protection, to the appropriate asylum procedure. Submitting the same third-country national to repeated screenings should be avoided to the utmost extent possible.

- (18a) **If an illegally staying third-country national is apprehended or intercepted at or in the immediate vicinity of an internal border, the apprehending Member States may not apply the screening, if that person is taken back by another Member State under bilateral agreements or arrangements existing on the date of entry into force of this Regulation.**

**The Member State which has taken back the third-country national should apply the screening. However, in this case, the transfer of the third-country national has to occur immediately or within a brief period of time after the apprehension or interception, in order to ensure that screening should start without delay, which, in any case, cannot result in the person concerned being subject to restrictive measures, including detention or other alternative measures in both Member States, for a period exceeding the maximum foreseen in this Regulation for the purpose of screening.**

- (18b) **This Regulation is without prejudice to provisions of national law covering the identification of third-country nationals suspected of staying in a Member State illegally in order to research, within a brief but reasonable time, the information enabling a determination of the illegality or legality of the stay.**

- (18c) **Without prejudice to the rules on border control applicable at the internal borders of the Member States where a decision to lift such controls has not been taken yet, screening of third country nationals apprehended in connection with unauthorised crossing of such internal borders where the controls have not yet been lifted should follow the rules established by this Regulation for screening within the territory and not the rules established for screening at the external borders.**

- (19) The screening should be completed as soon as possible, and should not exceed 5 days ~~where it is conducted at the external border and 3 days where it is conducted within the territory of a Member State.~~ Any extension of the 5 days' time limit should be reserved for exceptional situations at the external borders, where the capacities of the Member State to handle screenings are exceeded for reasons beyond its control such as crisis situations referred to in Article 1 of Regulation XXX/XXX [crisis proposal].

- (20) The Member States should determine appropriate locations for the screening at ~~or in proximity to~~ the external border **or, if not possible because there are no adequate facilities at the border or they are already occupied, in any other location**, taking into account geography and existing infrastructures, ensuring that apprehended third-country nationals as well as those who present themselves at a border crossing point can be swiftly submitted to the screening. The tasks related to the screening may be carried out in hotspot areas as referred to in point (23) of Article 2 of Regulation (EU) 2019/1896 of the European Parliament and of the Council<sup>3</sup>.

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<sup>3</sup> Regulation (EU) 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard, OJ L 295, 14.11.2019, p. 1.

- (21) In order to achieve the objectives of the screening, close cooperation should be ensured between the competent national authorities referred to in Article 16 of Regulation 2016/399, those referred to in Article 5 of the [Asylum Procedures Regulation] as well as those responsible for carrying out return procedures respecting Directive 2008/115. Child protection authorities should also be closely involved in the screening wherever necessary to ensure that the best interests of the child are duly taken into account throughout the screening. Member States should be allowed to avail themselves of the support of the relevant agencies, in particular the European Border and Coast Guard Agency and the [European Union Agency for Asylum], within the limits of their mandates. Member States should involve the national Rapporteurs for Anti-trafficking **or equivalent mechanisms** wherever the screening reveals facts relevant for trafficking in line with Directive 2011/36/EU of the European Parliament and of the Council<sup>4</sup>.
- (22) When conducting the screening, the competent authorities should comply with the Charter of Fundamental Rights of the European Union and ensure the respect for human dignity and should not discriminate against persons on grounds of sex, racial, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinions, membership of a national minority, disability, age or sexual orientation. Particular attention should be paid to the best interests of the child.
- (23) In order to ensure compliance with EU and international law, including the Charter of Fundamental Rights, during the screening, each Member State should ~~establish~~ **provide for** a monitoring mechanism and put in place adequate safeguards for the independence thereof. **For this purpose Member States may resort to already existing national fundamental rights monitoring mechanisms.** The monitoring mechanism should cover in particular the respect for fundamental rights in relation to the screening, as well as the respect for the applicable national rules regarding detention and compliance with the principle of non-refoulement as referred to in Article 3(b) of Regulation (EU) 2016/399. The Fundamental Rights Agency should establish general guidance as to the establishment and the independent functioning of such monitoring mechanism. Member States should furthermore be allowed to request the support of the Fundamental Rights Agency for developing their national monitoring mechanism. Member States should also be allowed to seek advice from the Fundamental Rights Agency with regard to establishing the methodology for this monitoring mechanism and with regard to appropriate training measures. Member States should also be allowed to invite relevant and competent national, international and non-governmental organisations and bodies to participate in the monitoring. The independent monitoring mechanism should be without prejudice to the monitoring of fundamental rights provided by the European Border and Coast Guard Agency's fundamental rights monitors provided for in Regulation (EU) 2019/1896. The Member States should investigate allegations of the breach of the fundamental rights during the screening, including by ensuring that complaints are dealt with expeditiously and in an appropriate way.

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<sup>4</sup> Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, OJ L 101, 15.4.2011, p. 1.



- (24) **As soon as possible and, at latest** by the end of the screening, the authorities responsible for the screening should fill in a ~~de-briefing~~ **screening form with all relevant information gathered**. The form should be transmitted **by any appropriate means, including digital tools**, to the authorities examining applications for international protection or to the authorities competent for return **procedures**— depending on whom the individual is referred to. ~~In the former case, the authorities responsible for the screening should also indicate any elements which may seem to be relevant for determining whether the competent authorities should submit the application of the third-country national concerned to an accelerated examination procedure or to the border procedure.~~ **The end of screening should not prevent authorities, where appropriate, to continue actions to determine the identity of the person concerned and assess possible security risks.**
- (25) The biometric data taken during the screening should, together with the data referred to in Articles [12, 13, 14 and 14a] of the Eurodac Regulation be transmitted to Eurodac by the competent authorities in accordance with the deadlines provided for in that Regulation.
- (26) A preliminary health ~~examination~~ **check** should be carried out on all persons submitted to the screening at the external borders with a view to identifying persons in need of immediate care or requiring other measures to be taken, for instance isolation on public health grounds. ~~The specific needs of minors and vulnerable persons should be taken into account.~~ If it is clear from the circumstances that such ~~examination~~ **check** is not needed, in particular because the overall condition of the person appears to be very good, the ~~examination~~ **check** should not take place and the person concerned should be informed of that fact. The preliminary health ~~examination~~ **check** should be carried out by ~~the health authorities~~ **qualified medical staff** of the Member State concerned. ~~With regard to third-country nationals apprehended within the territory, the preliminary medical examination should be carried out where it is deemed necessary at first sight.~~
- (26a) A vulnerability check should be carried out to identify any indication of vulnerability. The specific needs of minors and vulnerable persons should be taken into account.**
- (27) During the screening, all persons concerned should be guaranteed a standard of living complying with the Charter of Fundamental Rights of the European Union and have access to emergency health care and essential treatment of illnesses. Particular attention should be paid to individuals with vulnerabilities, such as pregnant women, elderly persons, single parent families, persons with an immediately identifiable physical or mental disability, persons visibly having suffered psychological or physical trauma and unaccompanied minors. In particular, in case of a minor, information should be provided in a child-friendly and age appropriate manner. All the authorities involved in the performance of the tasks related to the screening should **report any situation of vulnerabilities observed or reported to them**, respect human dignity, privacy, and refrain from any discriminating actions or behaviour.
- (28) Since third-country nationals subject to the screening may not carry the necessary identity and travel documents required for the legal crossing of the external border, an identification **or verification** procedure should be provided for as part of the screening.

- (29) The Common Identity Repository (“CIR”) was established by Regulation (EU) 2019/817 of the European Parliament and of the Council (Interoperability Regulation)<sup>5</sup> to facilitate and assist in the correct identification of persons registered in the Entry/Exit System (“EES”), the Visa Information System (“VIS”), the European Travel Information and Authorisation System (“ETIAS”), Eurodac and in the European Criminal Records Information System for third country nationals (“ECRIS-TCN”), including of unknown persons who are unable to identify themselves. For that purpose, the CIR contains only the identity, travel document and biometric data recorded in EES, VIS, ETIAS, Eurodac and ECRIS-TCN, logically separated. Only the personal data strictly necessary to perform an accurate identity check is stored in the CIR. The personal data recorded in the CIR is kept for no longer than strictly necessary for the purposes of the underlying systems and should automatically be deleted where the data are deleted from the underlying systems. Consultation of the CIR enables a reliable and exhaustive identification of persons, by making it possible to consult all identity data present in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in one go, in a fast and reliable manner, while ensuring a maximum protection of the data and avoiding unnecessary processing or duplication of data.
- (30) In order to establish the identity of the persons subject to the screening, a verification should be initiated in the CIR in the presence of the person during the screening. During that verification, the biometric data of the person should be checked against the data contained in the CIR. Where the biometric data of a person cannot be used or if a query with that data fails, the query could be carried out with identity data of the person in combination with travel document data, where such data are available. In accordance with the principles of necessity and proportionality, and where the query indicates that data on that person are stored in the CIR, Member State authorities should have access to the CIR to consult the identity data, travel document data and biometric data of that person, without the CIR providing any indication as to which EU information system the data belong to.
- (31) Since the use of the CIR for identification purposes has been limited by Regulation (EU) 2019/817 to facilitating and assisting in the correct identification of persons registered in the EES, VIS, ETIAS, Eurodac and ECRIS-TCN in situations of police checks within the territory of the Member States, that Regulation needs to be amended to provide for the additional purpose of using the CIR to identify persons during the screening established by this Regulation.
- (32) Given that many persons submitted to the screening may not carry any travel documents, the authorities conducting the screening should have access to any other relevant documents held by the persons concerned in cases where the biometric data of such persons are not usable or yield no result in the CIR. The authorities should also be allowed to use data from those documents, other than biometric data, to carry out checks against the relevant databases.

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<sup>5</sup> Regulation (EU) 2019/817 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 borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA, OJ L 135, 22.5.2019, p. 27.

- (33) The identification of persons during border checks at the border crossing point and any consultation of the databases in the context of border surveillance or police checks in the external border area by the authorities who referred the person concerned to the screening should be considered as part of the screening and should not be repeated, unless there are special circumstances justifying such repetition.
- (34) In order to ensure uniform conditions for the implementation of Articles 11(54) and 12(58) of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>6</sup>. For the adoption of relevant implementing acts, the examination procedure should be used.
- (35) The screening should also assess whether the entry of the third-country nationals into the Union could pose a **security risk** ~~threat to internal security or to public policy~~.
- (36) As the screening concerns persons present at the external border without fulfilling entry conditions, or disembarked after a search and rescue operation, the security checks as part of the screening should be at least of a similar level as the checks performed in respect of third country nationals that apply on beforehand for an authorisation to enter the Union for a short stay, whether they are under a visa obligation or not.

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<sup>6</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing power (OJ L 55, 28.2.2011, p. 13).

- (37) For third-country nationals who are on the basis of their nationality exempt from the visa requirement under Regulation (EU) 2018/1806 of the European Parliament and the Council<sup>7</sup>, Regulation (EU) 2018/1240 of the European Parliament and of the Council<sup>8</sup> (ETIAS Regulation) provides that they have to apply for a travel authorisation to come to the EU for short stay. Before receiving that travel authorisation, the persons concerned are submitted to security checks of the personal data they submit against a number of EU databases – the Visa Information System (VIS), the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), the Europol data processed for the purpose referred to in Article 18(2)(a) of Regulation (EU) 2016/794<sup>9</sup>, ECRIS-TCN<sup>10</sup> – as well as Interpol’s Stolen and Lost Travel Document database (SLTD) and Travel Documents Associated with Notices database (Interpol TDAWN).
- (38) As to third-country nationals who are subject to the visa requirement under Regulation (EU) 2018/1806, they are submitted to security checks against the same databases as visa-free third country nationals, pursuant to Regulation (EU) 810/2009 and Regulation (EU) 767/2008 before a visa is issued.
- (39) It follows from the reasoning developed in recital (36) that as regards persons subject to the screening, automated verifications for security purposes should be carried out against the same systems as is provided for applicants for a visa or for a travel authorisation under the European Travel Information and Authorisation System: the VIS, EES, ETIAS, SIS, ECRIS-TCN, Europol and Interpol’s SLTD and TDAWN. Persons submitted to the screening should also be checked against ECRIS-TCN as regards persons convicted in relation to terrorist offences and other forms of serious criminal offences, Europol data referred to in the preceding recital 38, the Interpol’s Lost and Stolen Travel Documents database and Travel Documents Associated with Notices databases (TDAWN).

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<sup>7</sup> Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement (OJ L 303, 28.11.2018, p. 39).

<sup>8</sup> Regulation (EU) 2018/1240 of the European Parliament and of the Council of 12 September 2018 establishing a European Travel Information and Authorisation System (ETIAS) and amending Regulations (EU) No 1077/2011, (EU) No 515/2014, (EU) 2016/399, (EU) 2016/1624 and (EU) 2017/2226 (OJ L 236, 19.9.2018, p. 1).

<sup>9</sup> Regulation (EU) 2016/794 of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (Europol) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (OJ L 135, 24.5.2016, p. 53–114)

<sup>10</sup> Regulation (EC) 2019/816 of the European Parliament and of the Council of 17 April 2019 establishing a centralised system for the identification of Member States holding conviction information on third-country nationals and stateless persons (ECRIS-TCN) to supplement the European Criminal Records Information System and amending Regulation (EU) 2018/1726 (OJ L 135, 22.5.2019, p. 1–26)

- (40) Those checks should be conducted in a manner that ensures that only data necessary for carrying out the security checks is retrieved from those databases. With regard to persons who have ~~requested~~ **made an application for** international protection at a border crossing point, the consultation of databases for the security check as part of the screening should focus on the databases that were not consulted during the border checks at the external border, thus avoiding repeated consultations.
- (41) Where justified for **its purpose**, ~~the purpose of the security check~~, the screening could also include verification of objects in the possession of third-country nationals, in accordance with national law. Any measures applied in this context should be proportionate and should respect the human dignity of the persons subject to the screening. The authorities involved should ensure that the fundamental rights of the individuals concerned are respected, including the right to protection of personal data and freedom of expression.
- (42) Since access to EES, ETIAS, VIS and ECRIS-TCN is necessary for the authorities designated to carry out the screening in order to establish whether the person could pose a ~~threat to the internal security or to public policy~~ **security risk**, Regulation (EC) No 767/2008, Regulation (EU) 2017/2226, Regulation (EU) 2018/1240 and Regulation (EC) No 2019/816, respectively, should be amended to provide for this additional access right which is currently not provided by those Regulations. In the case of Regulation (EU) No 2019/816, this amendment should for reasons of variable geometry take place through a different regulation than the present one.
- (43) The European search portal (ESP) established by Regulation (EU) 2019/817 should be used to carry out the searches against the European databases, EES, ETIAS, VIS and ECRIS-TCN **and Europol data**, for identification, **verification**, or for the purpose of security checks, as applicable.
- (44) Since the effective implementation of the screening is dependent upon correct identification of the individuals concerned and of their security background, the consultation of European databases for that purpose is justified by the same objectives for which each of those databases has been established, that is to say, the effective management of the Union's external borders, the internal security of the Union and the effective implementation of the Union's asylum and return policies.
- (44a) National databases can also be checked in this context whenever national law authorizes such queries.**
- (44b) For the purposes of complying with the obligation to perform identity and security checks during the screening, Member States who do not yet apply some provisions of Schengen acquis in full and do not therefore have access to all Union systems and databases are responsible for the identity and security checks by carrying out searches only in those Union systems and databases to which they have access.**

- (45) Since the objectives of this Regulation, namely the strengthening of the control of persons ~~who are about to enter the Schengen area~~ **at the external borders** and their referral to the appropriate procedures, cannot be achieved by Member States acting alone, it is necessary to establish common rules at Union level. Thus, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (46) In accordance with Articles 1 and 2 of the Protocol No 22 on the position of Denmark, as annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, Denmark is not taking part in the adoption of this Regulation and is not bound by it or subject to its application. Given that this Regulation builds upon the Schengen acquis, Denmark shall, in accordance with Article 4 of that Protocol, decide within a period of six months after the Council has decided on this Regulation whether it will implement it in its national law.
- (47) This Regulation constitutes a development of the provisions of the Schengen acquis, in which Ireland does not take part, in accordance with Council Decision 2002/192/EC<sup>11</sup>; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.
- (48) As regards Iceland and Norway, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen acquis, which fall within the area referred to in Article 1, point A of Council Decision 1999/437/EC<sup>12</sup>.
- (49) As regards Switzerland, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2008/146/EC<sup>13</sup>.

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<sup>11</sup> Council Decision 2002/192/EC of 28 February 2002 concerning Ireland's request to take part in some of the provisions of the Schengen acquis (OJ L 64, 7.3.2002, p. 20).

<sup>12</sup> Council Decision 1999/437/EC of 17 May 1999 on certain arrangements for the application of the Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the association of those two States with the implementation, application and development of the Schengen acquis (OJ L 176, 10.7.1999, p. 31).

<sup>13</sup> Council Decision 2008/146/EC of 28 January 2008 on the conclusion, on behalf of the European Community, of the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis (OJ L 53, 27.2.2008, p. 1).

- (50) As regards Liechtenstein, this Regulation constitutes a development of the provisions of the Schengen acquis within the meaning of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis which fall within the area referred to in Article 1, point A of Decision 1999/437/EC read in conjunction with Article 3 of Council Decision 2011/350/EU<sup>14</sup>.
- (51) As regards Cyprus, Bulgaria, Romania and Croatia, this Regulation constitutes an act building upon, or otherwise related to, the Schengen acquis within, respectively, the meaning of Article 3(1) of the 2003 Act of Accession, Article 4(1) of the 2005 Act of Accession and Article 4(1) of the 2011 Act of Accession,
- (51a) As regards Cyprus, Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession provides for specific rules that apply to the line between the areas of the Republic of Cyprus in which the Government of the Republic of Cyprus exercises effective control and those areas in which the Government of the Republic of Cyprus does not exercise effective control. Under this Regulation, although the line does not constitute an external border, checks are to be carried out on all persons crossing the line through an authorized or unauthorized crossing point with the aim to combat illegal immigration of third-country nationals and to detect and prevent any security risk. Therefore, it should be clarified that screening under Article 3 may also apply to third country nationals who are apprehended in connection with an unauthorized crossing of the line and to those who have made an application for international protection at the authorized crossing points.**
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<sup>14</sup> Council Decision 2011/350/EU of 7 March 2011 on the conclusion, on behalf of the European Union, of the Protocol between the European Union, the European Community, the Swiss Confederation and the Principality of Liechtenstein on the accession of the Principality of Liechtenstein to the Agreement between the European Union, the European Community and the Swiss Confederation on the Swiss Confederation's association with the implementation, application and development of the Schengen acquis, relating to the abolition of checks at internal borders and movement of persons (OJ L 160, 18.6.2011, p. 19).