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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

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Reasons

In September 2019, the European Commission's President Ursula von der Leyen announced a New Pact on Migration and Asylum that would set out a comprehensive approach to external borders, asylum and return systems, the Schengen area of free movement and the external dimension.

The New Pact on Migration and Asylum, presented together with this proposal represents a fresh start on migration based on a comprehensive approach to migration management. This proposal puts in place a common framework for asylum and migration management at EU level as a key contribution to the comprehensive approach and seeks to promote mutual trust between the Member States. Based on the overarching principles of solidarity and a fair sharing of responsibility, the New Pact advocates integrated policy-making bringing together policies in the areas of asylum, migration, return, external border protection, fight against migrants' smuggling and relations with key third countries reflecting a whole of government approach. It recognises that a comprehensive approach also means a stronger, more sustainable and tangible expression of the principle of solidarity and fair sharing of responsibility. These principles should therefore be applied to the whole of migration management, ranging from ensuring access to international protection to tackling irregular migration and unauthorised movements.

The challenges of migration management, related in particular to ensuring a quick identification of those in need of international protection or effective returns (for those who are not in need of protection), should be dealt with in an uniform manner by the entire EU as a whole. The available data demonstrate that the arrival of third-country nationals with clear international protection needs as observed in 2015-2016 has been partly replaced by mixed arrivals of persons. It is therefore important to develop a new effective process allowing for better management of mixed migration flows. In particular, it is important to create a tool allowing for the identification, at the earliest stage possible, of persons who are unlikely to receive protection in the EU[1]. Such tool should be built in the process of controls at the external borders, with a swift outcome as well as clear and fair rules, and should result in accessing the appropriate procedure (asylum or the procedure respecting the Return Directive[2]). It should lead to enhancing the synergies between external border controls, asylum and return procedures.

This proposal puts in place a **pre-entry screening** that should be applicable to all third-country nationals who are present at the external border without fulfilling the entry conditions or after disembarkation, following a search and rescue operation. The proposal introduces uniform rules concerning the procedures to be followed at the pre-entry stage of assessing the

[1] The share of migrants arriving from countries with recognition rates lower than 25% has risen from 14% in 2015 to 57% in 2018.

[2] 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.

individual needs of third country nationals and uniform rules on the length of the process of collecting relevant information for identification of the procedures to be followed with regard to such persons.

The proposal also creates an EU framework by putting in place uniform rules for the screening of irregular migrants apprehended within the territory and who eluded border controls on entering the Schengen area. This aims to contribute to protecting the Schengen area and ensure efficient management of irregular migration.

Objectives and main elements of the screening

The objective of the screening is to contribute to the new comprehensive approach to migration and mixed flows by ensuring that the identity of the persons but also any health and security risks are quickly established and that all third-country nationals who are present at the external border without fulfilling entry conditions or after disembarkation following a search and rescue operation are swiftly referred towards the applicable procedure.

The screening should consist in particular in:

(a) A preliminary health and vulnerability check;

(b) An identity check against information in European databases;

(c) Registration of biometric data (i.e. fingerprint data and facial image data) in the appropriate databases, to the extent it has not occurred yet; and

(d) A security check through a query of relevant national and Union databases, in particular the Schengen Information System (SIS), to verify that the person does not constitute a threat to internal security.

The proposed screening is expected to add value to the current procedures at the external borders in particular by:

– creating uniform rules concerning the identification of third-country nationals who do not fulfil entry conditions as referred to in the Schengen Borders Code, and submitting them to the health and security checks at the external borders, thus increasing the security within the Schengen area;

– clarifying that entry is not authorised to third-country nationals unless they are explicitly authorised entry following the assessment of entry conditions or when the Member State decides to apply in individual case special rules referred to in Article 6(5) of the Schengen Borders Code;

– creating a uniform tool of channelling to the appropriate procedure all third-country nationals who are present at the external border without fulfilling entry conditions or after disembarkation following a search and rescue operation: either a procedure that respects the Return Directive or, in case of an application for international protection, the normal asylum procedure, an accelerated procedure, the asylum border procedure or, finally, relocation to another Member State, (without prejudging the outcome of any such procedures, or replacing them) and

– creating an EU framework also for the screening of third-country nationals who entered the territory of the Member States without authorisation and who are apprehended within their territories.

The proposal, provides that the fundamental rights of the persons concerned should be protected with the help of an independent monitoring mechanism to be set up by the Member States. This monitoring mechanism should cover in particular the respect of fundamental rights in relation to the screening, as well as the respect of the applicable national rules in the case of detention and compliance with the principle of non-refoulement. It should furthermore ensure that complaints are dealt with expeditiously and in an appropriate way.

Finally, the proposal recognises the role of the EU agencies – Frontex and the European Union Agency for Asylum, which may accompany and support the competent authorities in all their tasks related to the screening. It also gives an important role to the Fundamental Rights Agency in supporting Member States in development of the independent monitoring mechanisms of fundamental rights in relation to the screening.

Scope of the proposal

The proposed screening should apply at the external borders to:

- all third country nationals crossing external borders outside of the border crossing points for whom Member States are under an obligation under the Eurodac Regulation to take their fingerprints, including those who apply for international protection;
- third country nationals who are disembarked after a search and rescue operation; and
- third country nationals presenting themselves at border crossing points without fulfilling the entry conditions and who apply there for international protection.

At the same time, the screening needs to rely on and link up with the tools put in place by other legislative instruments, in particular those regarding Eurodac[3], the use of the Schengen Information System for return[4] and Asylum Procedures[5].

Third-country nationals crossing the external borders outside of the border crossing points or disembarked following search and rescue operations, including those who apply for international protection

[3] Proposal of the Regulation (EU) XXXX amending Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes.

[4] Regulation (EU) 2018/1860 of the European Parliament and of the Council of 28 November 2018 on the use of the Schengen Information System for the return of illegally staying third-country nationals, OJ L 312, 7.12.2018, p. 1.

[5] Amended proposal for a Regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU

Under the Schengen Borders Code[6], external borders may be crossed only at the notified border crossing points[7]. Border control[8] consists of border checks carried out at the border crossing points and of border surveillance, which is carried out between the border crossing points in order to prevent persons from circumventing border checks, to counter cross-border criminality and to take measures against persons who have crossed the border without authorisation. Accordingly, third country nationals who crossed the external borders in an unauthorised manner and have no right to stay on the territory of the Member State concerned, must be submitted to procedures respecting the Return Directive[9]. In case the third-country national requests international protection, access to the asylum procedure must be ensured and the person should be referred to the asylum authorities. These rules, as appropriate, should also apply to third-country nationals disembarked following search and rescue operations.

To fit in the existing legal framework, in particular the Eurodac Regulation and the Schengen Information System for return[10] as well as the Asylum Procedures Directive[11], the mandatory screening of third-country nationals apprehended outside of border crossing points should cover those with regard to whom Member States are required to take biometric data in line with the Eurodac Regulation[12].

The Schengen Borders Code does not provide for any specific obligation concerning medical checks on third-country nationals apprehended during border surveillance. Third-country nationals who are present at the external border without fulfilling entry conditions or after disembarkation following a search and rescue operation might have been exposed to health threats (e.g. when coming from war zones, or as a result of being exposed to communicable diseases). It is therefore important to identify at the earliest stage possible all those in need of immediate care, as well as to identify minors and vulnerable persons, in order to refer them to a border or accelerated asylum procedure, in line with the applicable criteria for these procedures. The recent outbreak of COVID-19 also shows the need for health checks in order to identify persons requiring isolation on public health grounds. Therefore, there is a need for uniform rules on preliminary health checks, which would apply to all third-country nationals submitted to the screening.

Third-country nationals not fulfilling the conditions for entry and seeking international protection at border crossing points

In line with Article 3 of the Schengen Borders Code, border control should be carried out without prejudice to the rights of refugees and third-country nationals requesting international protection. However, the Schengen Borders Code does not provide for sufficient instructions for the border guards on how to handle third-country nationals seeking international

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6 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.

7 Article 5 of Regulation 2016/399.

8 Article 2 of Regulation 2016/399.

9 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.

10 See footnote 4.

11 Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60.

13 Third country nationals not asking for international protection who neither fulfil the entry conditions nor fall under any of the exceptions of Article 6(5) of the Schengen Borders code should be refused entry in accordance with Article 14 of Regulation 2016/399 (Schengen Borders Code).

protection at border crossing points[13] and different practices are observed in this regard across the Member States. As a result, third country nationals who are admitted to the territory despite not fulfilling the conditions for entry, based on the claim of seeking international protection, may abscond.

Furthermore, also for third country nationals in this situation, there are currently no rules on medical checks.There is therefore a need to establish additional rules to link border control at external borders seamlessly with the relevant subsequent procedures under the asylum or return acquis.

It is also necessary to clarify that during the screening, meaning during the checks to determine the appropriate following procedure(s), the third-country nationals concerned should not be authorised to enter the territory of the Member States. This rule should apply to all third-country nationals submitted to the screening at the external borders.

Guarantees resulting from the applicable procedures and applicability of relocation

For all third country nationals submitted to the screening, if they apply for international protection at the moment of apprehension or in the course of border control at the border crossing point or during the screening, they should be considered as applicants for international protection. However, Articles 26 and 27 of the [APR] Regulation XXXX as well as the legal effects concerning the [Reception Conditions Directive] XXXX should apply only after the screening has ended.

In a similar vein, the procedures established by the Return Directive should only start applying to persons covered by this proposal after the screening has ended.

The screening could be followed by relocation under the mechanism for solidarity established by Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] if 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].

General exclusion

The screening is not meant to apply to third-country nationals who fulfil the conditions of entry set out in Article 6 of Regulation 2016/399 (the Schengen Borders Code). If during the screening it emerges that the third-country nationals concerned fulfil those conditions, the screening should end immediately and the third-country national should be authorised to entry the territory of the Member State. This does not affect the possibility to apply penalties for the crossing of an external border without authorisation, as referred to in Article 5(3) of the Schengen Borders Code.

Similarly, the screening should not apply to third-country nationals with regard to whom the Member State may or is obliged to apply a derogation as regards the entry conditions. An exhaustive list of such cases is provided in Article 6(5) of the Schengen Borders Code and includes cases of third-country nationals who hold a residence permit or a long-stay visa from another Member State and who shall be authorised to enter the territory for transit purposes, or third-country nationals who are authorised by a Member State in an individual decision to

[13] Third country nationals not asking for international protection who neither fulfil the entry conditions nor fall under any of the exceptions of Article 6(5) of the Schengen Borders code should be refused entry in accordance with Article 14 of Regulation 2016/399 (Schengen Borders Code).

enter its territory on humanitarian grounds (for example for the purpose of medical treatment). However, should the Member State consider that the persons seeking international protection could benefit from an individual decision authorising entry as referred to in Article 6(5)(c), such person should be referred to the screening and the authorisation of entry should be put on hold pending the outcome of the appropriate procedure of granting international protection.

Third-country nationals apprehended in the territory

Third-country nationals apprehended by the police or other competent authorities in the territory of a Member State while not fulfilling the conditions of entry and stay have to be subject to return procedures in accordance with the Return Directive, unless they request international protection. In the latter case, they should have their request examined or be granted an authorisation or right to stay in the Member State concerned.

In order to better protect the Schengen area and ensure proper management of irregular migration, the Member States should be also obliged to submit these persons to the screening. However, this obligation should not apply in the case of overstayers (third-country nationals that have overstayed their visas, for instance by remaining in the Member States for a period longer than the 90 days out of a 180 day-period, or by staying for a period longer than the one allowed by a residence permit or a long-stay visa they hold) because persons in this situation have been subject to border checks upon arrival.

The screening of persons apprehended in a Member State's territory (while respecting the above limitation), should compensate for the fact that such persons presumably managed to avoid border checks upon entry into the European Union and Schengen area. By including these cases in the scope of the proposed regulation, it is ensured that also this screening will follow uniform rules and standards.

The screening in such cases should be triggered by the absence of an entry stamp in a travel document or the absence of a travel document altogether, hence, by inability to make a credible case that they crossed an external border in a regular manner. With the start of the operation of the Entry/Exit System in 2022 the stamps will be replaced by more reliable records in the electronic system available also to the law enforcement authorities, providing additional certainty as regards the legal entry of third-country nationals into the territory of the Member States.

- **Consistency with existing policy provisions in the policy area**

The proposal addresses challenges related to the protection of the external borders and the prevention of unauthorised movements within the area without controls at internal borders. The screening complements the rules concerning border control at the external borders as set out in Regulation 2016/399 (the Schengen Borders Code). It notably complements the obligations of the Member States resulting from Articles 3 and 13 of the Code as regards the obligation to prevent unauthorised entry, as well as the obligation to carry out border controls without prejudice to the rights of refugees and third-country nationals requiring international protection. It also reflects the fact that non-fulfillment of the conditions of entry is presumed in the absence of a stamp in a travel document (or, after the start of the operation of the Entry/Exit System in 2022, in the absence of an entry in the electronic system available also to the law enforcement authorities) with regard to third-country nationals apprehended in the territory of a Member State.

The proposal reflects recent developments of the Schengen acquis, in particular the implementation of the Entry/Exit System[14], scheduled for 2022. It also takes into consideration the interoperability framework established by Regulations (EU) 2019/817[15] and (EU) 2019/818[16]. The necessary changes in the legal acts establishing the specific databases, such as the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), the Visa Information System (VIS) are limited to providing access rights for the designated authorities in the context of the screening.

- **Consistency with other Union policies**

This proposal is one of the legislative building blocks of the New Pact on Migration and Asylum and provides for an additional element in migration management in full consistency with the proposals for a Regulation on Asylum and Migration Management, for a Regulation on the Asylum Procedure, for a Regulation on situations of crisis and the amended proposal for a recast Eurodac Regulation.

Together with the former, this proposal aims to contribute to a comprehensive approach to migration by establishing a seamless link between all stages of the migration process, from arrival to processing of requests for international protection until, where applicable, return. This should go hand in hand with full respect of fundamental rights. To that end, it is proposed to ensure that each Member State establish an independent monitoring mechanism, to ensure that fundamental rights are observed in relation to the screening and that any allegations of the breach of fundamental rights are properly investigated.

The monitoring mechanism for the screening should be part of the governance and monitoring of the migratory situation provided for in the new Regulation on Asylum and Migration Management (AMMR). The Member States should integrate the results of their national monitoring mechanism under this Regulation in their national strategies provided for in the AMMR.

This proposal does not affect existing procedures in the area of asylum and return nor abridge the exercise of individual rights but merely better organises the pre-entry stage to facilitate a better use of those procedures.

By the end of the screening the third-country nationals should be referred to the appropriate authorities, which – using the information collected during the screening in the debriefing form – should take the relevant decisions.

The information collected during the screening should therefore help to achieve the purposes of the respective procedures in a more efficient manner. It should in particular help the relevant asylum authorities to identify those asylum applicants who would fall within the scope of the border procedure, in line with the proposed amendments to the Asylum Procedures Regulation. It should also help to fight smuggling and improve border controls by better understanding migratory flows.

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[14] Regulation (EU) 2017/2226 of the European Parliament and of the Council of 30 November 2017 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes, OJ L 327, 9.12.2017, p. 20.

[15] 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 OJ L 135, 22.5.2019, p. 27.

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

The biometric data referred to in the Regulation XXXX [Eurodac Regulation] collected during the screening, together with the data referred to in Articles [12, 13, 14 and 14a] of that regulation, should be transmitted to Eurodac with regard to third country nationals with regard to whom the Member States are obliged to take fingerprints. By requiring this collection and transmission during the screening, this regulation specifies temporally and thus confirms the obligations concerning the fingerprinting and registration of third country nationals. The screening will also facilitate checking other large-scale IT systems, such as the Schengen Information System, for the purposes of return.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 77 (2)(b) of the Treaty on the Functioning of the European Union (TFEU) which concerns the development of a policy with a view to carrying out checks on persons and efficient monitoring of the crossing of external borders.

With regard to the amendments to the regulations establishing different databases (VIS, EES, ETIAS) and to the regulation establishing interoperability, the proposal is additionally based on Article 77(2)(d) of the TFEU, which concerns the development of a policy with a view to any measure necessary for the gradual establishment of an integrated management system for external borders.

• Subsidiarity (for non-exclusive competence)

Action in the area of freedom, security and justice falls within an area of competence shared between the EU and the Member States in accordance with Article 4(2) TFEU. Therefore, the subsidiarity principle is applicable by virtue of Article 5(3) Treaty on the European Union: The Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States (either at central level or at regional and local level), but rather at Union level (by reason of the scale or effects of the proposed action).

The objectives of this proposal cannot be sufficiently achieved by the Member States acting alone, and can be better achieved at the level of the Union. This is because they concern checks on persons at the external borders and efficient monitoring of the crossing of such borders. As explained in Recital 6 of the Schengen Borders Code "*border control is in the interest not only of the Member State at whose borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal migration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations".*

The proposed measures complement the existing rules concerning border control at the external border provided for in the Schengen Borders Code and other measures adopted under Article 77(2)(b) TFEU. By improving the overview by the competent authorities of who is crossing the external border and by contributing to a more efficient determination of the procedure to be applied to the third-country nationals concerned, the proposed measures contribute to preserving the area without controls at internal borders. The Union may therefore adopt the proposed measures, in accordance with the principle of subsidiarity.

• Proportionality

The proposal is proportionate to the identified objectives.

The proposal responds to the identified shortcomings in the management of mixed flows of third-country nationals who are present at the external border without fulfilling the entry conditions or after disembarkation, following a search and rescue operation, including third-country nationals seeking international protection.

The proposal introduces an obligation to check the biometric data of the third-country nationals concerned against the Common Identity Repository (CIR) established by the Interoperability Regulation, which contains all identity data of persons known to the large-scale IT systems in the area of migration, security and justice. This obligation is conceived in such a manner that only those data are accessed that are strictly necessary to identify third-country nationals (the data accessed is similar to those in a travel document) and that there will be no duplication or new collection of data in a large-scale IT system.

The security check should use the relevant European information systems and, to the extent possible, be carried out on the basis of biometric data, in order to minimise the risk of false identification.

The proposal aims at building synergies between different procedures and stages of managing migrants and asylum seekers. For instance, during the screening, any possible previous consultations of the relevant databases, in particular of the Schengen Information System, will have to be taken into account. This is particularly relevant with regard to persons requesting international protection at the border crossing point, for whom the databases should already have been consulted during the border checks.

The collection of the necessary and comprehensive information on the third-country nationals concerned is expected to contribute to speeding up the asylum by the end of the screening.

Similarly, the proposed uniform rules with regard to the health checks and identification of third-country nationals with vulnerabilities at the external borders are limited to what is absolutely necessary to achieve the proposal's objective, i.e. to identify third-country nationals with a need of immediate care or requiring isolation on public health grounds, as well as persons with vulnerabilities or special reception or procedural needs and to ensure adequate support for them. The proposal also requires adjusting the provision of information concerning the screening to the needs of minors and ensuring the presence of trained and qualified staff to deal with minors.

The proposal clarifies that during the screening at the external border, third-country nationals concerned should not be authorised to enter the territory of a Member State. This is expected to help in addressing in particular cases where the intention to apply for international protection is expressed during border checks but is then not pursued or is pursued only later in another Member State. The rule that one is not authorised entry during the screening reflects the obligation of the border guards to ensure that third-country nationals who do not fulfil entry conditions are not authorised entry. The determination in which situations the screening requires detention and the modalities thereof are left to national law.

The proposal also provides for screening to be applied to third-country nationals found within the territory of the Member States where there is no indication that they have crossed an external border to enter the territory of the Member States in an authorised manner. This does not concern 'overstayers', such as short-stay visa holders who stay longer than three months, or persons with a residence permit who stay after the latter expires. Those persons have been subject to border checks upon arrival in the Schengen area; the irregular character of their stay

is not related to the way they have entered, but flows from the fact that they have not left in due time.

- **Choice of the instrument**

The proposal complements and specifies the uniform rules on border control at the external borders contained in the Schengen Borders Regulation, by requiring from Member States that in the three types of situations referred to above, third country nationals undergo a screening consisting in an identity check, a security check and a health check where necessary, to enable the authorities to refer them to the appropriate procedures regarding asylum or return. To contribute in this manner to the security of the Schengen area and to the effectiveness of the asylum and migration policy of the Union, those checks should be performed according to uniform standards. To lay down those standards, directly applicable provisions are needed. It follows that a Regulation is the appropriate instrument to organise this screening.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Commission implements an evidence-based policy-making and refers to the separate document (XXX) which details the data and elements supporting the proposed approach for the various challenges identified since 2016 for the finalisation of the reform of the Common European Asylum System (CEAS). The data and information presented in that document are also relevant for the proposal introducing the screening as the part of the seamless process for all third country nationals who do not fulfil entry conditions upon crossing the external borders of the Schengen area.

- **Stakeholder consultations**

The Commission consulted Member States, the European Parliament and stakeholders on a number of occasions to gather their views on the future Pact on Migration and Asylum. In parallel, the Romanian, Finnish and Croatian Presidencies have held both strategic and technical exchanges on the future of various aspects of migration policy, including asylum, return, relations with third countries on readmission and reintegration. These consultations showed support for a fresh start on European asylum and migration policy to urgently address the flaws in the CEAS, to improve the effectiveness of the return system, to better structure and equip our relations with third countries on readmission and to ensure the sustainable reintegration of returning migrants.

Ahead of the launch of the New Pact on Migration and Asylum, the Commission has engaged in continuous discussions with the European Parliament that, in particular stressed the need to ensure the full respect of fundamental rights. Vice President Schinas and Commissioner Johansson also held consultations with all Member States in the first 100 days in office and bilateral follow-up consultations with all Member States. Member States acknowledged the need for unity, gradual progress in solving the weaknesses of the current system, the need for a new system of fair sharing of responsibility to which all Member States can contribute, strong border protection, importance of the external dimension of migration, and improved returns. Most Member States expressed their interest in having clear and efficient procedures at the external borders, notably to prevent unauthorised movements and facilitating returns.

Some Member States, however, stressed that one must not create any unnecessary administrative burden.

Commissioner Johansson equally held on several occasions targeted consultations with international organisations, civil society organisations (CSOs), relevant local non-governmental organisations in the Member States, social and economic partners.

The Commission took into consideration many recommendations of national and local authorities[17], non-governmental and international organisations, such as the United Nations High Commissioner for Refugees (UNHCR)[18], the International Organisation for Migration (IOM)[19], as well as think tanks and academia, on how to envisage a fresh start and address the current migration challenges in accordance with human rights standards. The Commission also took into account the contributions and studies of the European Migration Network[20], which have been launched at its initiative and which over the last years have produced several specialised studies, as well as ad hoc queries.

- **Fundamental rights**

The proposal respects fundamental rights and observes the principles recognised in particular in the following acts:

- the Charter of Fundamental Rights of the European Union,
- the obligations stemming from international law, in particular from the Geneva Convention on the Status of Refugees,
- the European Convention for the Protection of Human Rights and Fundamental Freedoms,
- the International Covenant for Civil and Political Rights and
- the United Nations Convention against Torture.

The screening shall be carried out in full respect of fundamental rights as enshrined in the Charter, including

- the right to human dignity (Article 1),
- the prohibition of torture and inhuman or degrading treatment or punishment (Article 4),
- the right to asylum (Article 18),
- the protection in the event of removal, expulsion or extradition (Article 19)
- the principle of non-discrimination (Article 21) and
- a high level of human health protection (Article 35).

In order to ensure that the Charter of Fundamental Rights and other EU and international obligations are complied with in relation to the screening, including the fact that access to

[17] For example, Berlin Action Plan on a new European Asylum Policy, 25 November 2019, signed by 33 organisations and municipalities.

[18] UNHCR Recommendations for the European Commission's proposed Pact on Migration and Asylum, January 2020.

[19] IOM Recommendations for the new European Union Pact on Migration and Asylum, February 2020.

[20] All studies and reports of the European Migration Network are available at: https://ec.europa.eu/home-affairs/what-we-do/networks/european_migration_network_en.

procedures will always need to be provided, the Member States are required to establish an independent monitoring mechanism. This monitoring mechanism should cover in particular the respect of fundamental rights at all times during the screening, as well as the respect of the applicable national rules in the case of detention. The Fundamental Rights Agency should establish general guidance as to the setting up and the independent functioning of this mechanism. Furthermore, it may support, at the request of a Member State, the competent national authorities in developing the national monitoring mechanism, in particular as regards setting the safeguards for its independence as well as establishing a methodology for the monitoring as well as training measures. The Member States should also ensure that their national law provides for investigations in allegations of breach of fundamental rights during the screening, including by ensuring that complaints are dealt with expeditiously and in an appropriate way.

This proposal fully takes into account the rights of the child and the special needs of vulnerable persons, by providing timely and adequate support in view of their physical and mental health. In the case of minors, support shall be given by personnel trained and qualified to deal with minors, while informing child protection authorities.

The proposal affects the right to protection of personal data (Article 8 of the Charter) in three ways, which are however strictly necessary and proportionate to reaching the objectives pursued, of increasing the security of the Schengen area and ensuring a smooth process of referring third-country nationals present at the external border without fulfilling the entry conditions to the appropriate procedures regarding asylum or return.

First, the consultation of travel documents, the processing of biometric data and the consultation of databases in the context of the identity check and security check constitute forms of processing of personal data, which are inherent in trying to find out who is the person wanting to - or trying to - cross the external border, and whether that person constitutes a security risk of the Member States. Those forms of processing of personal data are already provided for by the Schengen Borders Code. In this regulation, they are specified for the three sets of particular situations where third-country nationals are present at the external border without fulfilling entry conditions and in which the screening is deemed necessary to increase the security of the Schengen area and to ensure a smooth process of referring the persons concerned to the appropriate procedures regarding asylum or return.

Secondly, the debriefing form filled out by the end of the screening contains information that is necessary to enable the Member States' authorities to refer the persons concerned to the appropriate procedure. The filling out and reading of the debriefing form by the authorities thus constitute forms of processing of personal data which are inherent in referring third-country nationals present at the external border without fulfilling entry conditions to the appropriate procedures regarding asylum or return.

Thirdly, the temporal specification of Member States' obligations under the Eurodac Regulation to collect and transmit personal data of the third-country nationals concerned does not entail any additional processing of personal data. It rather obliges Member States to perform this processing, to which they are obliged pursuant to the Eurodac regulation, during the screening.

As the screening as such is a mere information-gathering stage which prolongs or complements the checks at the external border crossing point and which does not entail any decision affecting the rights of the person concerned, no judicial review is foreseen regarding

the outcome of the screening. Once the screening ends, the person who has been subject to the screening becomes subject of a return or asylum procedure, where decisions are taken which can be submitted to judicial review, or receives a refusal of entry, which can also be contested before a judicial authority. The screening should last as short a period as possible, and the maximum duration should only be reached in rare, difficult cases or in situations where many persons need to be subject to screening at the same time. Where the maximum duration of 5 days, in exceptional situations 10 days, is reached with regard to a person, the screening should end immediately and a procedure which leads up to a decision which can be judicially reviewed should start immediately with regard to that person.

4. BUDGETARY IMPLICATIONS

The proposed Regulation has implications for the EU budget.

The total financial resources necessary to support the implementation of this proposal is estimated at an amount of EUR 417.626 million, for the period 2021-2027. In particular, the following elements of the screening will potentially require financial support:

– infrastructure for the screening: creation and use/upgrade of the existing premises at the Border Crossing Points, reception centres etc.;

– access to the relevant databases at new locations;

– hiring of additional staff to carry out the screening;

– training of border guards and other staff to carry out the screening;

– recruitment of medical staff;

– medical equipment and premises for the preliminary health checks, where appropriate;

– setting up the independent monitoring mechanism of fundamental rights during the screening.

The expenses related to these new tasks can be covered by the resources available to the Member States under the new Multiannual Financial Framework 2021-2027.

No additional financial or human resources are requested in the context of this legislative proposal.

More detailed information in this regard can be found in the Legislative Financial Statement accompanying this proposal.

5. OTHER ELEMENTS

- **Detailed explanation of the specific provisions of the proposal**

Article 1 explains the subject matter of the Regulation. It specifies that it shall apply at the external borders and within the territories of the Member States, where there is no indication that third-country nationals have been subject to controls at external border.

Article 2 provides for definitions applicable in the context of the screening.

Article 3 sets out the personal scope by identifying third country nationals who should be submitted to the screening obligation at the external borders: third-country nationals who are present at the external border without fulfilling the entry conditions and for whom Member States are required to collect fingerprints under the Eurodac Regulation, persons disembarked

in the territory of the Member States following a search and rescue operation, and third country nationals requesting international protection at a border crossing point.

Not subject to the screening are third-country nationals who are authorised to enter on the basis of the derogations referred to in Article 6(5) of the Schengen Borders Code (holders of residence permits or long term visa for the purposes of transit, visa-required third country nationals in case a visa is issued at the border, and persons admitted by a Member State on the basis of an individual decision on humanitarian grounds, on grounds of national interest or because of international obligations, except persons seeking international protection who should be channelled to the screening).

Article 4 provides that during the screening, third-country nationals submitted to the screening at an external border are not authorised to enter the territory. It also provides that the screening ends as soon as it appears that the third-country national concerned fulfils the entry conditions. This is without prejudice to the possible application of penalties related to crossing the external border without authorisation, in line with the current rules set out in the Schengen Borders Code.

Article 5 specifies that the screening Member States shall apply also with regard to third-country nationals apprehended within the territory, where there are indications that they eluded border checks at the external border on entry.

Article 6 sets rules concerning the location and duration of the screening. The location is at the external borders, except in cases falling under Article 5. The proposed duration of the screening process is five days, unless the person concerned has already been kept at the border for 72 hours as referred to in Article 14(3) of Regulation (EU) No 603/2013 [Eurodac Regulation], in relation to unauthorised crossing of the external border. In such a case, the screening should not exceed 2 days. In case of the screening of persons apprehended within the territory the screening should not exceed three days. The article also enumerates all the elements of the screening and provides for a possibility for the Member States to be supported by the relevant EU agencies in the screening, within their respective mandates. It also acknowledges the need for the Member States to involve child protection authorities and the national Anti-trafficking rapporteurs in cases of vulnerable persons or minors.

Article 7 sets out the obligation for each Member State to establish an independent monitoring mechanism for fundamental rights and defines the role for the Fundamental Rights Agency in this process.

Article 8 indicates the information that needs to be communicated to the third-country nationals concerned during the screening, while also underlining the need to ensure that certain standards in this regard are complied with, so that information is communicated to third-country nationals in an adequate manner, in particular with regard to children.

Article 9 establishes the rules concerning the health check and the identification of third-country nationals with vulnerabilities and special reception or procedural needs at the external borders.

Article 10 provides specific rules concerning the identification of third-country nationals by means of consulting the Common Identity Repository (CIR) established by the Interoperability Regulation. Consultation of the CIR allows consulting 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 of or duplication of data.

Article 11 provides specific rules concerning security checks. It requires the competent authorities to consult the EES, ETIAS, VIS, the ECRIS-TCN and Interpol Travel Documents

Associated with Notices (TDAWN) database in order to verify whether the third country nationals does not present a security threat. All such checks should be carried out, to the extent possible, on the basis of biometric data, in order to minimise the risk of false identification, and the results of the searches should be restricted to reliable data only.

Article 12 complements Article 11 by providing the specific rules of the security checks.

Article 13 provides for a debriefing form that should be filled out by the competent authorities by the end of the screening.

Article 14 provides for the possible outcomes of the screening for the third-country nationals submitted thereto. In particular, it refers to procedures respecting Directive (EU) 2008/115/EC (Return Directive) with regard to third country nationals who have not applied for international protection and with regard to whom the screening has not revealed that they fulfil entry conditions. It also establishes that third-country nationals who made an application for international protection should be referred to the authorities referred to in Article [XY] of that Regulation. The form referred to in Article 13 of this Regulation shall be transmitted simultaneously with the referral of the person concerned to the competent authorities. Article 14 also refers to the possibility of relocation under the mechanism for solidarity established by Article XX of Regulation (EU) No XXXX/XXXX [Regulation on Migration and Asylum management]. The provision also refers to third country nationals submitted to the screening after having been apprehended within the territory. Such third-country nationals shall be subject either to procedures respecting Directive 2008/115/EC or to procedures referred to in Article 25(2) of Regulation (EU) No XXX/XXX (Asylum Procedures Regulation). The provision also provides that the authorities shall during the screening take the biometric data referred to in Articles [10, 13, 14 and 14a] of Regulation EU No XXX/XXX [Eurodac Regulation] of all persons to whom that Regulation applies, and shall transmit the data in accordance with the latter Regulation, where this has not yet been done.

Article 15 introduces the committee procedure for the purpose of adopting the implementing acts mentioned in the context of the identification and security checks in Articles 10 and 11 respectively.

Articles 16 - 19 provide for changes in the respective legal acts Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240, and (EU) 2019/817 establishing the databases to be consulted during the screening and the interoperability between them.

Article 20 provides for the evaluation of the implementation of the measures set out in this Regulation.

Article 21 contains final provisions.

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 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)[21] 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, or where third-country nationals are disembarked following search and rescue operations as well as where third-country nationals request international protection at a border crossing point without fulfilling entry conditions. 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

[21] 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.

Directive")[22]. 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 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 migrants and persons seeking international protection.

(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 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 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 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 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 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 in another Member State or not at all.

[22] 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.

(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 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, before the persons concerned are authorised to enter the territory. The Member States should apply measures pursuant to national law to prevent the persons concerned from entering the territory during the screening. In individual cases, where required, this may include detention, subject to the national law regulating that matter.

(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.

(15) All persons subject to the screening should be submitted to checks in order to establish their identity and to ascertain that they do not pose a threat to internal security or public health. In the case of persons requesting 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, or be made subject to procedures respecting 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. 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.

(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 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[23].

[23] 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 wherever the screening reveals facts relevant for trafficking in line with Directive 2011/36/EU of the European Parliament and of the Council[24].

(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 a monitoring mechanism and put in place adequate safeguards for the independence thereof. 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.

(24) By the end of the screening, the authorities responsible for the screening should fill in a de-briefing form. The form should be transmitted to the authorities examining applications for international protection or to the authorities competent for return – 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

[24] 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.

application of the third-country national concerned to an accelerated examination procedure or to the border procedure.

(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 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 is not needed, in particular because the overall condition of the person appears to be very good, the examination should not take place and the person concerned should be informed of that fact. The preliminary health examination should be carried out by the health authorities 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.

(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 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 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)[25] 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

[25] 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.

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.

(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(5) and 12(5) 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[26]. 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 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

[26] 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).

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.

(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[27], Regulation (EU) 2018/1240 of the European Parliament and of the Council[28] (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[29], ECRIS-TCN[30] – 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).

(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 international protection at a border crossing point, the consultation of databases for the security check as part of the screening should focus

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27 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).

28 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).

29 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)

30 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)

on the databases that were not consulted during the border checks at the external border, thus avoiding repeated consultations.

(41) Where justified for 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, 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, for identification 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.

(45) Since the objectives of this Regulation, namely the strengthening of the control of persons who are about to enter the Schengen area 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[31]; Ireland is therefore not taking part in the adoption of this Regulation and is not bound by it or subject to its application.

[31] 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).

(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[32].

(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[33].

(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[34].

(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,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter and scope

This Regulation establishes the screening at the external borders of the Member States of all third-country nationals who have crossed the external border in an unauthorised manner, of

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32 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).

33 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).

34 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).

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 Schengen area and their referral to the appropriate procedures.

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

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

Article 2

Definitions

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

1. ‘unauthorised crossing of the external border’ means crossing of an external border of a Member State by land, sea or air, at places other than border crossing points or at times other than the fixed opening hours, as referred to in Article 5(3) of Regulation (EU) 2016/399;
2. ‘threat to public health’ means a threat to public health within the meaning of Article 2, point 21, of Regulation (EU) 2016/399;
3. ‘verification’ means the process of comparing sets of data to establish the validity of a claimed identity (one-to-one check);
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);
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.

Article 3

Screening at the external border

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

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

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

2. The screening shall also apply to all third-country nationals who apply for international protection at external border crossing points or in transit zones and who do not fulfil the entry conditions set out in Article 6 of Regulation (EU) 2016/399.

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

Article 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.

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.

Article 5

Screening within the territory

Member States shall apply the screening to third-country nationals 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.

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.

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 Article 14 (1) and (3) of Regulation (EU) 603/2013 apply, where they remain physically at the external border for more than 72 hours, the period for the screening shall be reduced to two days.

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

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

6. The screening shall comprise the following mandatory elements:

(a) preliminary health and vulnerability check as referred to in Article 9;

(b) identification as referred to in Article 10;

(c) registration of biometric data in the appropriate databases as referred to in Article 14(6), to the extent it has not occurred yet;

(d) security check as referred to in Article 11;

(e) the filling out of a de-briefing form as referred to in Article 13;

(f) referral to the appropriate procedure as referred to in Article 14.

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

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

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

Article 7

Monitoring of fundamental rights

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

2. Each Member State shall establish an independent monitoring mechanism

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

– where applicable, to ensure compliance with national rules on detention of the person concerned, in particular concerning the grounds and the duration of the detention;

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

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

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

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

Article 8

Provision of information

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

   (a) the steps and modalities of the screening as well as possible outcomes of the screening;

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

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

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

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

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

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

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

(f) the information referred to in Article 13 of the Regulation (EU) 2016/679[35] [GDPR].

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

4. Member States may authorise relevant and competent national, international and non-governmental organisations and bodies to provide third country nationals with information under this article during the screening according to the provisions established by national law.

Article 9

Health checks and vulnerabilities

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

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

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

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

Article 10

Identification

1. To the extent it has not yet occurred during the application of Article 8 of Regulation (EU) 2016/399, the identity of third-country nationals submitted to the screening

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

pursuant to Article 3 or Article 5 shall be verified or established, by using in particular the following, in combination with national and European databases:

(a) identity, travel or other documents;

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

(c) biometric data;

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

3. Where the biometric data of the third-country national cannot be used or where the query with those data referred to in paragraph 2 fails, the query as referred to in paragraph 2 shall be carried out with the identity data of the third-country national, in combination with any identity, travel or other document data or with the identity data provided by that third-country national.

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

Article 11

Security check

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

2. For the purpose of conducting the security check referred to in paragraph 1, and to the extent that they have not yet done so in accordance with Article 8(3), point (a)(vi), of Regulation (EU) 2016/399, the competent authorities shall query relevant national and Union databases, in particular the Schengen Information System (SIS).

3. To the extent it has not been already done during the checks referred to in Article 8 of Regulation (EU) 2016/399, the competent authority shall query the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS), including the ETIAS watch list referred to in Article 29 of Regulation (EU) 2018/1240, the Visa Information System (VIS), the ECRIS-TCN system as far as convictions related to terrorist offences and other forms of serious criminal offences are concerned, the Europol data processed for the purpose referred to in Article 18(2), point (a), of Regulation (EU) 2016/794, and the Interpol Travel Documents Associated with Notices database (Interpol TDAWN) with the data referred to in Article 10(1) and using at least the data referred to under point (c) thereof.

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

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

Article 12

Modalities for security checks

1. The queries provided for in Article 10(2) and in Article 11(2) may be launched using, for queries related to EU information systems and the CIR, the European Search Portal in accordance with Chapter II of Regulation (EU) 2019/817 and with Chapter II of Regulation (EU) 2019/818[36].

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

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

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

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

Article 13

De-briefing form

On completion of the screening, the competent authorities shall, with regard to the persons referred to in Article 3 and in Article 5, complete the form in Annex I containing:

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

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

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

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

(d) information obtained on routes travelled, including the point of departure, the places of previous residence, the third countries of transit and those where protection may have been sought or granted as well as the intended destination within the Union;

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

Article 14

Outcome of the screening

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

   – have not applied for international protection and

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

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

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

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

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

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

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

   – have not applied for international protection and

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

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

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

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

7. Where the third country nationals referred to in Article(s) 3(1) and Article 5 are referred to an appropriate procedure regarding asylum or return, the screening ends. Where not all the checks have been completed within the deadlines referred to in Article 6(3) and (5), the screening shall nevertheless end with regard to that person, who shall be referred to a relevant procedure.

Article 15

Committee procedure

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

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 16

Amendments to Regulation (EC) No 767/2008

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

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

"2. Access to the VIS for the purposes of consulting the data shall be reserved exclusively for the duly authorised staff of the ETIAS Central Unit, of the national authorities of each Member State, including to duly authorised staff of the ETIAS National Units, designated pursuant to Article 8 of Regulation (EU) 2018/1240 of the European Parliament and of the Council, which are competent for the purposes laid down in Articles 15 to 22, for the duly authorised staff of the national authorities of each Member States and of the Union agencies, which are competent for the purposes laid down in Articles 20 and 21 of Regulation 2019/817, and for the competent authorities provided under Article 6(6) of Regulation (EU) 2020/XXX of the European Parliament and of the Council[37]. Such access shall be limited according to the extent that the data are required for the performance of their tasks for those purposes, and proportionate to the objectives pursued.";

Article 17

Amendments to Regulation (EU) 2017/2226

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

[37] Regulation (EU) No XXX of the European Parliament and of the Council of [...] 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].

(1) In Article 6(1), the following point (1) is added:

(1) support the objectives of the screening established by Regulation (EU) 2020/XXX of the European Parliament and of the Council[38], in particular for the checks provided under Article 10 thereof."

(2) Article 9 is amended as follows:

(a) paragraph 1 is replaced by the following:

"2a. The competent authorities referred to in Article 5(6) of Regulation (EU) 2020/XXX shall have access to the EES to consult data.";

(b) paragraph 4 is replaced by the following:

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

Article 18

Amendments to Regulation (EU) 2018/1240

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

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

"(a) contribute to a high level of security by providing for a thorough assessment of applicants as regards the risk they may pose to internal security, prior to their arrival at external border crossing points, and of persons subject to the screening referred to in Regulation (EU) 2020/XXX of the European Parliament and of the Council[39] [Screening Regulation], in order to determine whether there are factual indications or reasonable grounds based on factual indications to conclude that the presence of the person on the territory of the Member States poses a security risk;"

(1) In Article 13, paragraph 5 is replaced by the following:

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

[38] Regulation (EU) No XXX of the European Parliament and of the Council of [...] 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].

[39] Regulation (EU) No XXX of the European Parliament and of the Council of [...] 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].

authority shall have access to the data in the ETIAS Information System in accordance with paragraphs 1, 2 and 4 of this Article."

Article 19

Amendments to Regulation (EU) 2019/817

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

(1) In Article 17, paragraph 1 is replaced by the following:

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

(2) The following Article 20a is inserted:

"Article 20a

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

1. Queries of the CIR shall be carried out by the designated competent authority as defined in Article 6(7) of Regulation (EU) 2020/XXX, solely for the purpose of identifying a person according to Article 10 of that Regulation, provided that the procedure was initiated in the presence of that person.

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

Article 20

Evaluation

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

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

Article 21

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

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

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

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) No 2017/2226 and (EU) No 2018/1240

1.2. Policy area(s) concerned (Programme cluster)

Heading 4 (Migration and Border Management). Title 11. Border Management

Protection of the external borders:

carrying out checks on persons and efficient monitoring of the crossing of external borders

1.3. The proposal/initiative relates to:

☑ **a new action**

☐ **the extension of an existing action**

☐ **a merger or redirection of one or more actions towards another/a new action**

1.4. Grounds for the proposal/initiative

1.4.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

The proposal is a follow-up to the announcement made in September 2019 by the European Commission's President Ursula von der Leyen concerning the adoption of the New Pact on Migration and Asylum that would set out a comprehensive approach to external borders, asylum and return systems, the Schengen area of free movement and the external dimension.

The proposal accompanies the Commission Communication on a New Pact on Migration and Asylum which aims at reinforcing mutual trust between the Member States.

In the short term the Member States will need to designate the relevant authorities for the screening and set up the infrastructure that could be used to that end. Moreover, they will need to take actions to set up the monitoring mechanism for the fundamental rights during the screening. In this context, the first two years may require bigger investments than the following ones, in particular in the frontline Member States.

In the long term the Member States will need to develop and maintain screening centres, provide the necessary and adequately trained resources, as well as maintain the monitoring mechanism.

1.4.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting

from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

Reasons for action at European level (ex-ante)

The objective of the proposal is to contribute to a comehensive and resilient system of controls at the external borders in order to facilitate asylum and return procedures.

The objectives of this proposal cannot be sufficiently achieved by the Member States acting alone. In line with Recital 6 of the Schengen Borders Code "border control is in the interest not only of the Member State at whose borders it is carried out but of all Member States which have abolished internal border control. Border control should help to combat illegal migration and trafficking in human beings and to prevent any threat to the Member States' internal security, public policy, public health and international relations".

Expected generated Union added value (ex-post)

Compared to current procedures, the proposed screening will add value in particular by:

– creating uniform rules concerning the identification of third-country nationals who do not fulfil entry conditions as referred to in the Schengen Borders Code, and submitting them to the health and security checks at the external borders;

– ensuring that entry is not authorised to third-country nationals whose status is not confirmed yet and thus help prevent their absconding;

– facilitating the determination as well as the application of the appropriate procedure: return or, in case of an application for international protection, the normal asylum procedure, an accelerated procedure, the asylum border procedure or relocation to another Member State, and

– creating a framework also for the screening of third-country nationals who entered the territory of the Member States without authorisation and who are apprehended within their territories.

1.4.3. Lessons learned from similar experiences in the past

The proposal draws the lessons from the standard workflow currently implemented in Italy and in Greece in hotspot areas as referred to in Regulation 2019/1896. It provides for a close cooperation between national authorities, the Commission, relevant EU Agencies and other Member States experts and responds to specific challenges faced at external borders by the Member States particualry exposed to the migration.

1.4.4. Compatibility and possible synergy with other appropriate instruments

This proposal is one of the legislative building blocks of the New Pact on Migration and Asylum and provides for an additional element in migration management in full consistency with the proposals for a Regulation on Asylum and Migration Management, for a Regulation on the Asylum Procedure, for a Regulation on situations of crisis and the amended proposal for a recast Eurodac Regulation.

Together with the former, this proposal aims to contribute to a comprehensive approach to migration by establishing a seamless link between all stages of the migration process, from arrival to processing of requests for international protection until, where applicable, return. This should go hand in hand with full respect of

fundamental rights. To that end, it is proposed to ensure that each Member State establishes an independent monitoring mechanism, to ensure that fundamental rights are observed throughout the screening and that any allegations of the breach of fundamental rights are properly investigated.

The monitoring mechanism for the screening should be part of the governance and monitoring of the migratory situation provided for in the new Regulation on Asylum and Migration Management (AMMR). The Member States should integrate the results of their national monitoring mechanism under the Screening Regulation in their national strategies provided for in the AMMR.

The proposal does not affect existing procedures in the area of asylum and return nor abridge the exercise of individual rights but creates a first pre-entry stage intended to facilitate a better use of those procedures.

The outcome of the screening should lead to the third-country nationals concerned being referred to the relevant authorities, which – using the information collected during the screening in the debriefing form – should take the relevant decisions.

The information collected during the screening should therefore help to achieve the purposes of the respective procedures in a more efficient manner. It should in particular help the relevant asylum authorities to identify those asylum applicants who would fall within the scope of the border procedure, in line with the proposed amendments to the Asylum Procedures Regulation. It should also help to fight smuggling and improve border controls by better understanding the migratory flows.

The biometric data as referred to in the Regulation XXXX [Eurodac Regulation] together with the data referred to in Articles [10, 13, 14 and 14a] of the Eurodac Regulation collected during the screening, should be transmitted to Eurodac with regard to third country nationals submitted to the fingerprinting obligation, thus reinforcing the obligations concerning the fingerprinting and registration of third country nationals. The screening will also facilitate checking other large-scale EU IT systems, such as the Schengen Information System, for the purpose of return.

1.5. Duration and financial impact

☐ **limited duration**

☐ in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY for commitment appropriations and from YYYY to YYYY for payment appropriations.

☑ **unlimited duration**

Implementation with a start-up period from the entry into force

followed by full-scale operation.

1.6. Management mode(s) planned[40]

☑ **Direct management** by the Commission

– ☐ by its departments, including by its staff in the Union delegations;

– ☐ by the executive agencies

☑ **Shared management** with the Member States

☐ **Indirect management** by entrusting budget implementation tasks to:

– ☐ third countries or the bodies they have designated;

– ☐ international organisations and their agencies (to be specified);

– ☐ the EIB and the European Investment Fund;

– ☐ bodies referred to in Articles 70 and 71 of the Financial Regulation;

– ☐ public law bodies;

– ☐ bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;

– ☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;

– ☐ persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

– *If more than one management mode is indicated, please provide details in the 'Comments' section.*

Comments

Elements of the screening potentially requiring the financial support:
- infrastructure for the screening: creation and use/upgrade of the existing premises at the BCPs, reception centres etc.
- training of the border guards and other relevant authorities to carry out the screening
- access to the relevant databases at the new locations

[40] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: https://myintracomm.ec.europa.eu/budgweb/EN/man/budgmanag/Pages/budgmanag.aspx

- training and hiring of the new resources to carry out the screening - recruitment of the medical staff - medical equipment and premises for the preliminary health checks - establishment of the independent monitoring mechanism, to ensure that fundamental rights are observed throughout the screening

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

As per per the proposal for a regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa (COM(2018) 473 final):

Shared management:

Each Member State shall establish a management and control systems for its programme and ensure the quality and the reliability of the monitoring system and of data on indicators, in accordance with the Common Provision Regulation (CPR). In order to facilitate a swift start of implementation, it is possible to 'roll-over' existing well-functioning management and control systems to the next programming period.

In this context, Member States will be requested to set up a monitoring committee to which the Commission shall participate in an advisory capacity. The monitoring committee shall meet at least once a year. It shall review all issues that affect programme progress towards achieving its objectives.

The Member States will send an annual performance report, which should set out information on the progress in the implementation of the programme and in achieving the milestones and targets. It should also raise any issues affecting the performance of the programme and describe the action taken to address them.

At the end of the period, each Member States shall submit a final performance report. The final report should focus on the progress made towards achieving the objectives of the programme and should give an overview of the key issues that affected the programme's performance, the measures taken to address those issues and the assessment of the effectiveness of these measures. In addition it should present the contribution of the programme to tackling the challenges identified in the relevant EU recommendations addressed to the Member State, the progress made in achieving the targets set out in the performance framework, the findings of the relevant evaluations and the follow-up given to those findings and the results of the communication actions.

According to the draft CPR proposal, the Member States shall send each year an assurance package, which includes the annual accounts, the management declaration and the audit authority's opinions on the accounts, the management and control system and the legality and regularity of the expenditure declared in the annual accounts. This assurance package will be used by the Commission to determine the amount chargeable to the Fund for the accounting year.

A review meeting between the Commission and each Member State shall be organised every two years to examine the performance of each programmes.

The Member States send 6 times per year data for each programme broken down by specific objectives. These data refers to the cost of operations and the values of common output and result indicators.

In general:

The Commission shall carry out a mid-term and a retrospective evaluation of the actions implemented under this Fund, in line with the Common Provisions Regulation. The mid-term evaluation should be based in particular on the mid-term evaluation of programmes submitted to the Commission by the Member States by 31 December 2024.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

As per the proposal for a regulation of the European Parliament and of the Council establishing, as part of the Integrated Border Management Fund, the instrument for financial support for border management and visa (COM(2018) 473 final):

Both the ex-post evaluations of the DG HOME 2007-2013 Funds and the interim evaluations of the current DG HOME Funds show that a mix of delivery modes in the areas of migration and home affairs allowed for an effective way to achieve the objectives of the Funds. The holistic design of the delivery mechanisms is maintained and includes shared, direct and indirect management.

Through shared management Member States implement programmes that contribute to the policy objectives of the Union, which are tailor-made to their national context. These programmes could include screening activities. Shared management ensures that financial support is available in all participating States. Furthermore, shared management allows for funding predictability and for Member States, who are most knowledgeable of the challenges they are faced with, to plan their long-term endowments accordingly. Top-up funding for Specific Actions (which require cooperative effort amongst Member States or where new developments in the Union require additional funding to be made available to one or more Member States) and for resettlement and transfer activities can be implemented through shared management. As a novelty, the Fund can also provide emergency assistance through shared management, in addition to direct and indirect management.

Through direct management, the Commission supports other actions that contribute to the common policy objectives of the Union. The actions enable tailor made support for urgent and specific needs in individual Member States ("emergency assistance"), support transnational networks and activities, test innovative activities that could be scaled up under national programmes and cover studies in the interest of the Union as a whole ("Union actions").

Through indirect management, the Fund retains the possibility to delegate budget implementation tasks to, among others, International Organisations and Home Affairs Agencies for particular purposes.

Bearing in mind the different objectives and needs, a thematic facility is proposed under the Fund as a way to balance the predictability of multiannual allocation of funding to the national programmes with flexibility in disbursing funding periodically to actions with a high level of added value to the Union. The thematic facility will be used for specific actions in and amongst Member States, Union actions, emergency assistance, resettlement and relocation. It will ensure that funds can be allocate and transferred among the different modalities above, on the basis of a two yearly programming.

The payment modalities for shared management are described in the draft CPR proposal, which foresees an annual pre-financing, followed by a maximum of 4 interim payments per programme and year based on the payment applications sent by the Member States during the accounting year. As per the draft CPR proposal the pre-financing are cleared within the final accounting year of the programmes.

The control strategy will be based on the new Financial Regulation and on the Common Provision Regulation. The new Financial Regulation and the draft proposal for CPR should extend the use of the simplified forms of grants such as lump-sums, flat rates and unit costs. It also introduces new forms of payments, based on the results achieved, instead of the cost. Beneficiaries will be able to receive a fixed amount of money if they prove that certain actions such as trainings or delivery of humanitarian assistance have taken place. This is expected to simplify the control burden both at beneficiary and Member State level (e.g. check of bills and receipts for costs).

For shared management, the draft CPR proposal builds on the management and control strategy in place for the 2014-2020 programming period but introduces some measures aimed at simplying the implementation and reducing the control burden at the level of both beneficiaries and Member States. The novelties include:

- the removal of the designation procedure (which should allow to speed up the implementation of the programmes)

- management verifications (administrative and on-the-spot) to be carried out by the managing authority on a risk-basis (compared to the 100% administrative controls required in the 2014-2020 programming period). Furthermore, under certain conditions, the managing authorities may apply proportionate control arrangements in line with the national procedures.

- conditions to avoid multiple audits on the same operation/expenditure

The programme authorities will submit to the Commission interim payment claims based on expenditure incurred by beneficiaries. The draft CPR proposal allows the managing authorities to carry out management verifications on a risk-basis and foresees also specific controls (e.g. on-the-spot controls by the managing authority and audits of operations/expenditure by the audit authority) after the associated expenditure has been declared to the Commission in the interim payment claims. In order to mitigate the risk of reimbursing ineligible expenditure, the draft CPR foresees the Commission's interim payments to be capped at 90%, given that at this moment only part of the national controls have been carried out. The Commission will pay the remaining balance following the annual clearance of accounts exercise, upon receipt of the assurance package from the programme authoirties. Any irregularities detected by the Commisson or the European Court of Auditors after the transmission of the annual assurance package may lead to a net financial correction.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

DG HOME has not been facing important risks of errors in its spending programmes. This is confirmed by the recurrent absence of significant findings in the annual reports of the Court of Auditors.

In shared management, the general risks in relation to the implementation of the current programmes concerns the under-implementation of the Fund by the Member States and the possible errors derived from the complexity of rules and weaknesses in management and control systems. The draft CPR simplifies the regulatory framework by harmonising the rules and management and control systems across the different Funds implemented under shared management. It simplifies also the control requirements (e.g. risk-based management verifications, possibility for proportionate control arrangements based on national procedures, limitations of audit work in terms of timing and/or specific operations).

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

The cost of controls is expected to remain the same or potentially be reduced for Member States. For the present programming cycle 2014-2020, as of 2017, the cumulative cost of control by the Member States is estimated at approximately 5% of the total amount of payments requested by the Member States for the year 2017.

This percentage is expected to decrease with efficiency gains in implementation of the programmes and increase in payments to Member States.

With the risk based approach to management and controls being introduced in the draft CPR coupled with enhanced drive to adopt simplified cost options (SCOs), the cost of controls for Member States is expected to be reduced further.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

DG HOME will continue to apply its Anti-Fraud Strategy in line with the Commission's Anti-Fraud Strategy (CAFS) in order to ensure inter alia that its internal anti-fraud related controls are fully aligned with the CAFS and that its fraud risk management approach is geared to identify fraud risk areas and adequate responses.

As regards shared management, Member States shall ensure the legality and regularity of expenditure included in the account submitted to the Commission. In this context, Member States shall take all required actions to prevent, detect and correct irregularities. As in the present programming cycle 2014-2020 Member States are obliged to put in place procedures for detection of irregularities and anti-fraud coupled with the specific Commission Delegated Regulation on reporting of irregularities. Anti-Fraud measures will remain a cross-cutting principle and obligation for Member States.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading of the multiannual financial framework and new expenditure budget line(s) proposed

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Heading No. 4: "Migration and Border Management"	Diff./Non-diff.[41]	from EFTA countries[42]	from candidate countries[43]	from third countries	within the meaning of Article [21(2)(b)] of the Financial Regulation
4	11.02.01 – 'Border Management and Visa Instrument'	Diff.	NO	NO	YES	NO
4	11.01.01 – Support expenditure for the "Integrated Border Management Fund (IBMF) — Instrument for financial support for border management and visa (BMVI)"	Non-diff.	NO	NO	YES	NO

<u>Comment:</u>

It should be noted that appropriations requested in the context of the proposal are covered by appropriations already foreseen in the LFS underlying the BMVI Regulation. No additional financial or human resources are requested in the context of this legislative proposal.

41 Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.
42 EFTA: European Free Trade Association.
43 Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	4	'Migration and Border Management'

			2021	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	***Post 2027***	**TOTAL**
Operational appropriations (split according to the budget lines listed under 3.1)	Commitments	(1)	66,510	67,470	62,450	55,174	55,174	55,174	55,174		417,126
	Payments	(2)	17,918	27,079	28,591	24,930	25,868	33,452	47,439	211,850	417,126
Appropriations of an administrative nature financed from the envelope of the programme[44]	Commitments = Payments	(3)	0,250	0,250							0,500
TOTAL appropriations for the envelope of the programme	Commitments	=1+3	**66,760**	**67,720**	**62,450**	**55,174**	**55,174**	**55,174**	**55,174**	**-**	**417,626**
	Payments	=2+3	**18,168**	**27,329**	**28,591**	**24,930**	**25,868**	**33,452**	**47,439**	**211,850**	**417,626**

[44] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

Heading of multiannual financial framework	7	'Administrative expenditure'

This section should be filled in using the 'budget data of an administrative nature' to be firstly introduced in the Annex to the Legislative Financial Statement , which is uploaded to DECIDE for interservice consultation purposes.

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	*Post 2027*	TOTAL
Human resources										
Other administrative expenditure		0.060	0.060	-	-	-	-	-		0.120
TOTAL appropriations under HEADING 7 of the multiannual financial framework	(Total commitments = Total payments)	0.060	0.060	-	-	-	-	-		0.120

EUR million (to three decimal places)

		2021	2022	2023	2024	2025	2026	2027	*Post 2027*	TOTAL
TOTAL appropriations across HEADINGS of the multiannual financial framework	Commitments	**66,820**	**67,780**	**62,450**	**55,174**	**55,174**	**55,174**	**55,174**	**-**	**417,746**
	Payments	**18,228**	**27,389**	**28,591**	**24,930**	**25,868**	**33,452**	**47,439**	**211,850**	**417,746**

3.2.2. *Summary of estimated impact on appropriations of an administrative nature*

– ☐ The proposal/initiative does not require the use of appropriations of an administrative nature

– ☑ The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
HEADING 7 of the multiannual financial framework								
Human resources								
Other administrative expenditure	0.060	0.060						**0.120**
Subtotal HEADING 7 of the multiannual financial framework	0.060	0.060						**0.120**
Outside HEADING 7[45] of the multiannual financial framework								
Human resources								
Other expenditure of an administrative nature								
Subtotal outside HEADING 7 of the multiannual financial framework								
TOTAL	0.060	0.060						**0.120**

The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

[45] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former 'BA' lines), indirect research, direct research.

3.2.2.1. Estimated requirements of human resources

☑ The proposal/initiative does not require the use of human resources.

☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full time equivalent units

Years		2021	2022	2023	2024	2025	2026	2027
• Establishment plan posts (officials and temporary staff)								
Headquarters and Commission's Representation Offices								
Delegations								
Research								
• External staff (in Full Time Equivalent unit: FTE) - AC, AL, END, INT and JED [46] Heading 7								
Financed from HEADING 7 of the multiannual financial framework	- at Headquarters							
	- in Delegations							
Financed from the envelope of the programme [47]	- at Headquarters							
	- in Delegations							
Research								
Other (specify)								
TOTAL								

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary staff	
External staff	

[46] AC= Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD= Junior Professionals in Delegations.

[47] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

3.2.3. Third-party contributions

– The proposal/initiative:

– ☐ does not provide for co-financing by third parties

– ☑ provides for the co-financing by third parties estimated below:

Appropriations in EUR million (to three decimal places)

Years	2021	2022	2023	2024	2025	2026	2027	TOTAL
Specify the co-financing body	Participating Member States, incl. Schengen Associated Countries							
TOTAL appropriations co-financed	tbd	tbd	tbd	tbd	tbd	tbd	tbd	

3.3. Estimated impact on revenue

– ☑ The proposal/initiative has no financial impact on revenue.

– ☐ The proposal/initiative has the following financial impact:

– ☐ on own resources

– ☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Impact of the proposal/initiative[48]						
	2021	2022	2023	2024	2025	2026	2027
Article …….							

For assigned revenue, specify the budget expenditure line(s) affected.

Other remarks (e.g. method/formula used for calculating the impact on revenue or any other information).

[48] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.