



ASGI SUGGESTED AMENDMENTS ON THE EC PROPOSAL FOR A SCREENING REGULATION

December 2021

The aim of the present document is to underline the most critical provisions of the European Commission's Proposal, taking into account the insights collected through ASGI's actions "[Medea](#)" and "[Inlimine](#)" at internal and external borders in Italy, focusing in particular on the critical issues arising from the hotspot approach, that the Commission has institutionalized in the current Proposal. The comments and suggested amendments also consider the content of the Draft Report proposed by MEP Brigit Sippel on November 30, 2021.

It is also possible to read about ASGI's position on the new Proposal on the screening at the external border on the [policy note published in November 2021](#).

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| EC Proposal | ASGI Position | ASGI Proposal |
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| <p><i>Article 1</i> <i>Subject matter and scope</i></p> <p>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 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.</p> <p>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.</p> <p>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.</p> <p>The screening shall also be carried out within the territory of the Member States where there is no</p> | <p>ASGI considers that the approach followed by the EC in the present proposal is very similar to the hotspot approach already implemented in Italy and Greece, according to which the purpose of initial screenings is not limited to the strengthening of the control of persons at the border but it also entails the referral of foreigners to different procedures. However, when third country nationals apply for asylum at the external borders, they shall be referred to asylum procedures within the territory, according to the provisions of Directives 2013/32/EU and 2013/33/EU. Therefore, the screening at external borders only takes place when third country nationals do not apply immediately for asylum.</p> <p>Moreover, ASGI believes that, as it happens for checks within the Schengen Border Code, screenings shall be accompanied by procedural safeguards and shall be implemented without prejudice to fundamental rights as well as to the right to asylum and principle of non-refoulement.</p> <p>Finally, if the purpose of the screening is the strengthening of the control of persons at the border (in compliance with art. 77, let. B) TFEU, introducing controls for people already in the territory is outside the scope of the regulation and of article 77. Conducting screenings within</p> | <p><i>Article 1</i> <i>Subject matter and scope</i></p> <p>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 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.</p> <p>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.</p> <p>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.</p> <p>The screening shall also be carried out within the territory of the Member States where there is no</p> |

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| <p>indication that third-country nationals have been subject to controls at external borders.</p> | <p>the territory may lead to discriminatory police practices of ethnic profiling. ASGI suggests erasing the last part of the article on screening within the territory.</p> | <p>indication that third-country nationals have been subject to controls at external borders.</p> <p>When applying this Regulation, Member States shall act in full compliance with relevant Union law, including the Charter of Fundamental Rights of the European Union ('the Charter'), relevant international law, including the Convention Relating to the Status of Refugees done at Geneva on 28 July 1951 ('the Geneva Convention'), obligations related to access to international protection, in particular the principle of non-refoulement, and fundamental rights. In accordance with the general principles of Union law, decisions under this Regulation shall be taken on an individual basis and be subject to effective remedies.</p> |
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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.

In principle, **ASGI rejects the assumption that a screening procedure**, as the one envisaged in the regulation, **is applied indiscriminately to all asylum seekers**. Provided that, in the view of the Commission, one of the purposes of the screening is the referral to the appropriate procedure, in situation where a TCN has promptly applied for asylum at the border; this means that **the person shall be immediately referred to the asylum procedure and all the guarantees of Directives 2013/32/EU and 2013/33/EU shall apply**. It follows that health, vulnerability and security checks can be carried out within the asylum procedure, once the person is admitted on the territory and accommodated in reception facilities. If third-country nationals apply for international protection at the border, **their application shall be registered without delay** and applicants shall have access to all safeguards envisaged in the relevant EU asylum provisions.

Therefore, ASGI suggests erasing para 2 or, at least, adding a provision on immediate access to the asylum procedures and the safeguards accorded by relevant directives/regulations. Recitals (16) should be modified accordingly.

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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.~~

OR

2. ~~The screening shall also apply~~ **When the screening is applied 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,

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| | | <p>applicants are entitled to all rights and safeguards provided for by [the Asylum Procedure Regulation] and by [the Reception Conditions Directive].</p> <p>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.</p> |
| <p><i>Article 4</i> <i>Authorisation to enter the territory of a Member State</i></p> <p>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.</p> <p>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.</p> | <p>ASGI underlies that the prohibition to enter the territory, while the person actually remains on that territory, is a legal fiction and it cannot exclude the jurisdiction of Member States, neither exempt them from complying with international and EU law, including the respect for fundamental rights (see, ex multis ECtHR, <i>Amuur c. France</i>; CJEU, <i>FMS and others and, mutatis mutandis, El Dakkak</i>).</p> <p>In the context of the proposed screening procedures, third country nationals could find themselves in a situation like the one experienced by the recipients of a delayed refusal of entry order in Italy (issued according to article 10 of the Italian Codified Act on Immigration). The provisions of the article have been modified following the intervention of the Constitutional Court's judgment no. 275/2017,</p> | <p><i>Article 4</i> <i>Authorisation to enter the territory of a Member State</i></p> <p>1. During the screening, the person is authorised to enter and remain on the territory of a Member State and referred to in Article 3, paragraphs 1 and 2 shall not be authorised to enter the territory of a Member State. may be accommodated in official adequate facilities located in proximity of the borders. Member States may decide to carry out the screenings in reception facilities within the territory of the State.</p> <p>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-</p> |

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| | <p>that acknowledged the lack of sufficient procedural guarantees for recipients of a delayed refusal of entry order.</p> | <p>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.</p> |
| <p><i>Article 5</i> <i>Screening within the territory</i></p> <p>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</p> | <p>If the purpose of the screening is the strengthening of the control of persons at the border (in compliance with art. 77, let. B) TFEU, introducing controls for people already in the territory is outside the scope of the regulation and of article 77. Moreover, conducting screenings within the territory may lead to discriminatory police practices of ethnic profiling. ASGI suggests erasing the article on screening within the territory.</p> | <p><i>Article 5</i> <i>Screening within the territory</i></p> <p>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</p> |
| <p><i>Article 6</i> <i>Requirements concerning the screening</i></p> <p>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.</p> <p>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.</p> <p>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</p> | <p>ASGI underlines that third country nationals at the external borders without a visa and/or without the requirements to enter the Schengen area often arrive after dangerous and exhausting journeys. During such journeys, they may have suffered torture or other forms of violence and may have lived in inhuman and degrading conditions, especially if transiting through Libya and the Balkan route. It is therefore necessary to establish reception and need-assessment procedures to meet the</p> | <p><i>Article 6</i> <i>Requirements concerning the screening</i></p> <p>1. In the cases referred to in Article 3, The screening may be conducted at locations in official adequate facilities located at or in proximity to the external borders and provided with access to appropriate services, or in facilities within the territory of the State.</p> <p>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.</p> |

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;

material and psychological needs of persons on entry.

In fact, a distinction must be made between the identification phase, where the main actors are the police authorities, and the care and assistance phase, which must be conducted by independent third parties. While it is acceptable that the identification phase might take place in facilities at the borders and within a very short timeframe, **proper medical assistance and care require adequate reception facilities and more time.**

Therefore, ASGI suggests that **screenings are to be carried out in facilities at the border within a very short period of time** and, in case the procedure is not concluded, third country nationals shall be accommodated in adequate facilities on the territory. The medical and vulnerability assessment shall also take place in proper accommodation facilities.

Moreover, the insights collected by ASGI when monitoring hotspots or transit zones show that **screening procedures often imply a *de facto* deprivation of liberty.**

To this regard, ASGI notes that the proposal does not explicitly regulate the possibility of applying detention during the screening phase, leaving the matter to the discretion of Member States. This might reinforce the practices of *de facto*

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.~~ **When, due to exceptional circumstances, it is impossible to conclude the screening within the period of 5 days, third country nationals shall be accommodated in adequate reception facilities within the territory and the period of 5 days may be extended according to the individual circumstances.** 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~~

- (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.

detention among States at external borders, which differ the ones from the others. If the regulation is adopted without amendment that explicitly refers to detention, there is a strong risk that it will automatically lead to indiscriminate *de facto* detention. For this reason, **ASGI suggests that the regulation includes an express prohibition of detention during the screening.** It suggests, moreover, to introduce a provision according to which national legislation shall provide for an effective remedy in case of unlawful deprivation of liberty.

~~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.~~

(new 5. During the period of the screening, third country nationals shall not be detained. Member States establish effective remedies in national legislations.)

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;
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| | | <p>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.</p> |
| | <p>ASGI critically observes that the regulation lacks specific safeguards for children, while including them in the categories to which the screenings apply.</p> <p>ASGI urges the introduction of a provision on the assessment of the best interests of the child during the entire procedure. Children - either accompanied and unaccompanied - should be automatically considered as a vulnerable group and their needs should be immediately addressed on arrival by competent authorities and organisations with specific backgrounds. To do so, they are to be accommodated in suitable reception centres: therefore, an explicit provision prohibiting detention of all minors (both accompanied and unaccompanied) should be included in the proposal.</p> | <p>Article 6 – bis (new)</p> <ol style="list-style-type: none"> 1. The best interest of the child shall be of primary consideration during the screening procedure. 2. Screenings of unaccompanied children and children with their families are carried out in appropriate facilities for the reception of unaccompanied minors or of families on the territory of Member States, within the mainstream system of protection for minors. 3. Member States shall as soon as possible, and before the screenings starts, appoint a guardian for unaccompanied minors. The minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests. |

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| | <p>Moreover, the Regulation shall ensure that unaccompanied children are appointed to a guardian already during the screening procedure as well as that the benefit of doubt applies when the age of the person is unclear and for the entire duration of the age assessment procedure.</p> | <p>4. Member States shall treat as a minor any person regarding whom there are reasons to believe that they are a minor as well as any person declaring to be a minor, unless and until documentation or age assessment proves otherwise. Age assessment procedures are started only when there is a reasonable doubt the person is not a minor.</p> <p>5. Member States shall ensure that the statements of minors only form the basis of the de-briefing form if they are assisted by their parent(s) or a legal representative [guardian].</p> |
| <p><i>Article 7</i> <i>Monitoring of fundamental rights</i></p> <p>1. Member States shall adopt relevant provisions to investigate allegations of non-respect for fundamental rights in relation to the screening.</p> <p>2. Each Member State shall establish an independent monitoring mechanism</p> <ul style="list-style-type: none"> – 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, | <p>ASGI welcomes the provision for a monitoring mechanism and, most importantly, the amendments suggested by the Rapporteur (amendments 75-86) in the Draft presented on 30th of November.</p> <p>However, for the mechanism to be effective, it is important that its scope of application is extended to all border control activities, and that its prompt intervention is guaranteed. The issues of speed intervention and of States' accountability are crucial for the effectiveness of the mechanism.</p> <p>Thus, the amendments proposed by ASGI aim at:</p> <ul style="list-style-type: none"> - extending the scope of investigations; | <p><i>Article 7</i> <i>Monitoring of fundamental rights</i></p> <p>1. Member States shall adopt relevant provisions to investigate and, where applicable, to prosecute allegations of non-respect for fundamental rights in relation to all activities taking place at external borders, including border surveillance, and screening, asylum and return procedures.</p> <p>2. Each Member State shall establish an independent monitoring mechanism that is granted unconditional access to the border and to facilities where border procedures take place, in order to:</p> <ul style="list-style-type: none"> - to ensure compliance with EU and international law, including the Charter of |

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.

- ensuring a coordination between the present monitoring mechanism and the Schengen monitoring mechanism;
- ensuring that the mechanism is enabled to investigate on information provided by independent organisation and individuals, including when they are not (yet, or anymore) on EU territory;
- including medical institutions and organisations amongst the actors involved in the mechanism;
- ensuring that the bodies part of the mechanism have direct and unconditional access to places, individuals and documents;
- strengthening the role of FRA within the mechanisms.

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 and **the conditions** of 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;
- **(new) trigger and monitor investigations into allegations of non-respect for fundamental rights, including when information is provided by independent organisations and by individuals that are either present in the Member State concerned, in another Member State, or in a neighbouring Third Country.**

3. (new) Member States shall grant that the mechanism has access to all relevant documents, including audio and video materials, and information collected in national databases and in the CIR, with undue delay.

4. Member States shall put in place adequate safeguards to guarantee **the effectiveness** and the independence of the mechanism, **by**

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| | | <p>including into the mechanism members of national human rights institutions and/or national ombudspersons, as well as of international institutions and relevant non-governmental organisations. Medical institutions and NGOs shall be included in the mechanism, or otherwise allowed unconditional access to the border and to facilities where border procedures take place along with the mechanism or in accordance with the mechanism requests.</p> <p>5. 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.</p> <p>(new. The referred mechanism shall periodically report to the Fundamental Rights Agency on its activities, findings and recommendations. The periodical reports shall be published annually.)</p> <p>Member States may invite relevant national, international and non-governmental organisations and bodies to participate in the monitoring.</p> |
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| | | <p>(new. 6. The mechanism referred above shall act in close cooperation with the Schengen evaluation and monitoring mechanism and it shall also take into account the violations of fundamental rights occurring at the internal borders).</p> <p>(new. 7. Member States shall provide for the necessary coordination of the referred mechanism with national judicial authorities as well as with international judicial and non judicial bodies, to ensure that a failure in the respect of fundamental rights is sanctioned through effective, proportionate and dissuasive penalties.)</p> |
| <p><i>Article 8</i> <i>Provision of information</i></p> <p>1. Third-country nationals subject to the screening shall be succinctly informed about the purpose and the modalities of the screening:</p> <p>(a) the steps and modalities of the screening as well as possible outcomes of the screening;</p> <p>(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.</p> <p>2. During the screening, they shall also, as appropriate, receive information on:</p> | <p>ASGI stresses that access to information is a fundamental precondition for the exercise of the right to asylum and the right of defense. Information shall entail first and foremost the right to apply for asylum and is to be provided in a language that the person understands, by trained personnel - for instance, cultural mediators.</p> <p>While information can be initially provided by national authorities, lawyers and members of independent civil society organizations shall be granted access to the facilities where third country nationals are accommodated, in order to ensure proper access to information and legal representation.</p> | <p><i>Article 8</i> <i>Provision of information</i></p> <p>1. Third-country nationals subject to the screening shall be succinctly informed about the purpose and the modalities of the screening:</p> <p>(a) the steps and modalities of the screening as well as possible outcomes of the screening;</p> <p>(b) the rights and obligations of third country nationals during the screening, obligation on them to remain in the designated facilities during the screening.</p> <p>2. During Before the screening, they shall also, as appropriate, receive information on:</p> |

(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];

(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 right to apply for international protection and of the rules set by 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~~ irregularly 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) 2016/67935 [GDPR].

(f) the information referred to in Article 13 of the Regulation (EU) 2016/67935 [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.

3. The information provided during the screening shall be **given in the mother tongue of the person or, if not possible, in a language which the third-country national understands or is reasonably supposed to understand**. The information **shall be given in writing as well as, in exceptional circumstances, where necessary, orally using interpretation services by cultural mediators adequately trained**. It shall be provided in an appropriate manner taking into account the age and the gender of the person.

When the applicant is a minor, information shall be provided in a child-friendly manner, including in both written and oral forms by appropriately trained staff and with the involvement of the guardian, in case of unaccompanied minors.

4. Member States shall authorise ~~relevant and~~ competent national, international and non-governmental organisations and bodies **to have access to the facilities where third country nationals are accommodated**, to provide them 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

ASGI stresses that procedures for examining health conditions and vulnerabilities are necessary, and the availability of medical and psychological assistance services plays a key role. However, in order to be effective and adequate those services must be implemented within the territory, not at the border. Similarly, it is **necessary to set up measures to take care of and accommodate people with special needs and vulnerabilities**, identified by specialized personnel. Such care needs appropriate time and place: ASGI suggests that **the needs of vulnerable migrants are addressed in proper facilities within the territory. Those facilities should be set up according to national laws regulating the accommodation of asylum seekers, of minors and of foreigners in need of medical assistance.**

At the same time, ASGI underlines isolation measures justified on public health grounds shall be proportionate and cannot be applied in a discriminatory way against third country nationals, as it happens for the “quarantine ships (see: <https://inlimine.asgi.it/report-rights-on-the-skids-the-experiment-of-quarantine-ships-and-main-points-of-criticism/>).

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 adequate facilities within the territory of the Member State.**
~~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.~~

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| <p>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.</p> | | <p>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.</p> |
| <p><i>Article 10</i> Identification</p> <p><i>Article 11</i> Security check</p> <p><i>Article 12</i> Modalities for security checks</p> | <p>ASGI stresses the need for these checks to happen only when necessary and permitted, to avoid an unproportionate access of law authorities to third country nationals' personal data. Many of the existing databases do not provide for law authorities access, if not in exceptional cases. Such limitations must be respected when the screening process is undergoing.</p> <p>The interoperability must always respect the legal basis and scope of each database checked. According to ASGI, it is important to put explicit and clear limitations to:</p> <ul style="list-style-type: none"> - the methods of acquisition of biometric data (to be taken only once during the preceding), in order to avoid the use of violence and coercion against third country nationals at borders; - the access to IT databases, <i>in primis</i> CIS, with the specification of the competent authority to | <p>With regard to Articles 10,11 and 12 ASGI welcomes the amendments proposed by the MEP Rapporteur in the Draft Report presented on the 30th of November.</p> |

perform checks (whether only national authorities or also EU agencies);

- the type of information accessible, providing for guarantees for vulnerable categories of migrants, especially minors.

With regards to art. 11, ASGI stresses that security checks must respect the principles of necessity and proportionality. All checks must also be subjected to fundamental rights monitoring.

ASGI is concerned that **the search of authorities of the “objects in [third country nationals’] possession” -which might include telephones- could breach the respect for private life laid down in Article 7 of the EU Charter.**

The type of information that can be accessed must be clearly stated vis à vis every database checked, with no general or horizontal provision. It must be stressed that the purpose of security checks is to assess **the existence of risks solely to internal security, which should be more precisely defined in order not to leave a disproportionate margin of discretion to Member States.**

In case a threat to internal security is found, such finding should not have as direct consequence the return of the third country national: if he/she

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| | <p>applied for internal protection, the access to asylum procedure must be guaranteed, regardless of its result.</p> | |
| <p><i>Article 13</i> <i>De-briefing form</i></p> <p>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:</p> <p>(a) name, date and place of birth and sex;</p> <p>(b) initial indication of nationalities, countries of residence prior to arrival and languages spoken;</p> <p>(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;</p> <p>(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;</p> <p>(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.</p> | <p>According to ASGI, one of the main critical elements of the implementation of the hotspot approach in Italy is the issuance of a “foglio notizie” following the initial screening (a pre-printed form that contains a list of pre-established ‘reasons’ for the illegal border crossing, which migrants are requested to fill out after disembarkation).</p> <p>Third country nationals do not receive a copy of the “foglio notizie” and are not requested to check the information written in the paper, nor they have the chance to correct or to question what has been stated in the module.</p> <p>ASGI warns against the critical implications for the right to defence related to this practice and suggests that third country nationals shall always receive a copy of the screening module and that they shall be able to correct the information initially stated.</p> | <p>Article 13 De-briefing form</p> <p>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:</p> <p>(a) name, date and place of birth and sex;</p> <p>(b) initial indication of nationalities, countries of residence prior to arrival and languages spoken;</p> <p>(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;</p> <p>(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 existence of family or cultural links within the Union, that may be relevant for the application of [Asylum and Migration Management Regulation]</p> <p>(e) information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any</p> |

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| | | <p>related information in cases of suspected smuggling;</p> <p>(e) information on the results of the screening and of medical and vulnerability assessment or on the needs for further assessment.</p> <p>(new) The information filled in the form shall be read to third country nationals by independent interpreters/cultural mediators in a language that the person understands. The person shall be able to comment and eventually amend the information.</p> <p>(new) Third country nationals shall receive a written copy of the debriefing form.</p> |
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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

ASGI states that the outcome of the screening has to be incorporated into a formal administrative order that is subject to an effective remedy according to article 47 of the Charter. The debriefing form cannot itself constitute a complete administrative decision.

Authorities have to issue a decision grounded on reasons in fact and in law that justify the outcome of the screening, be it a refusal of entry, the referral to the asylum procedure, or to a return procedure.

Moreover, the possibility to apply for asylum shall never be prevented, even if it was not done immediately at the arrival or during the border crossing.

~~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 so far 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 border crossing point as defined by Article 2 (8) of Regulation 2016/399 a search and rescue operations, entry may be refused in accordance with Article 14 of Regulation 2016/399. As per Article 14(2) (3) of Regulation 2016/399, the person shall receive a substantiated decision stating the precise reasons for the refusal of entry and should have the right to appeal.~~

~~(new) At the end of the procedure, the administrative authorities shall issue a written decision, justified in fact and in law, that indicates the outcome of the screening and state the procedural guarantees of the person, depending on the relevant procedure. In any case, the decision shall be subject to an appeal.~~

~~(new) Third country nationals receive free legal~~

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

~~assistance in order to guarantee the right of defence and to an effective remedy.~~

~~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 during the screening period and who have not been referred to the asylum procedure yet 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~~

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.

~~— 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 refusal of entry, 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.~~

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