



...ing a screening of third-country national...  
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# JOINT POLICY PAPER: The EU Screening Regulation



**Border Violence  
Monitoring Network**



**ASGI**  
Associazione  
per gli Studi Giuridici  
sull'Immigrazione



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# INTRODUCTION

The European Commission's Proposal for the Screening Regulation in the New Pact on Migration and Asylum introduces a screening procedure for Third Country Nationals (TCNs) arriving at external European borders in what the Commission announced as a “more efficient, seamless and harmonised migration management system”. The Regulation lays out a system whereby individuals are not considered to have entered the territory of the EU using the legal fiction of ‘non-entry’, are *de facto* detained in closed centres where they undergo screening procedures which, in turn, decide if they will be referred to an accelerated border procedure or a full assessment of their claim under normal procedures. The screening process is foreseen to conclude within 3-5 days, which can be extended by a further 5 days in situations of ‘crisis’. An extensive checklist including identification, registration, ‘security checks’, as well as a health and vulnerability assessment must be undertaken within this time. As laid out in the proposal, reasons for detention during the procedure covers almost all situations of irregular entry, which remains one of the the only available pathways to seek asylum in the EU. Even in the absence of *de jure* detention, screening centres would be located in border regions and would be ‘outside of the territory’ based on the legal fiction of ‘non-entry’. In reality, this translates to the designation of closed, controlled screening centres and *de facto* detention for all new arrivals into the bloc from the age of 12 years old and above.

While elements of this proposal are not new, the Regulation has been extensively criticised by civil society and legal practitioners, namely for the grave risk it poses to fundamental rights. In conjunction with the other legislative proposals in the New Pact, the Screening Regulation forms a new paradigm for managing arrivals to the EU that would severely limit, if not abolish, the right to asylum in practice.

As negotiations between the EU’s three co-legislators - the Commission, the Parliament, and the Council - are being finalised, it is essential to look to Member States where aspects of the Regulation have already been piloted. This will, in turn, elucidate how new arrivals will be ‘managed’ by Member States herein. In order to do so, some of the most worrisome elements of the Screening Regulation will be analysed with evidence taken from practices observed in Italy’s hotspots, the Samos Closed Controlled Access Centre (CCAC) in Greece, the Reception and Identification Centres (RICs) on mainland Greece, and in Bulgarian transit centres. In each case, screening mechanisms have subjected people to arbitrary detention, inadequate conditions in violation of the prohibition of inhuman and degrading treatment, and procedures that systematically violate the right to asylum. The failed attempt at establishing an independent border monitoring mechanism at Croatia’s borders is put forth as a salient example for how the safeguards imagined will, in reality, do little to protect individuals against such violations.

# ARTICLE 4

## What is Article 4?

Article 4 of the Screening Regulation introduces the legal fiction of 'non-entry' to a Member State's territory. The article foresees that TCNs who are apprehended while crossing into a Member State's territory 'irregularly' or are disembarked following a Search and Rescue (SAR) operation, shall not be authorised to legally enter the territory of a Member State during the screening process. This is regardless of whether they have applied for international protection. The concept of 'non-entry' is commonly applied by states in transit zones at ports of entry; however it has been increasingly extended into Member States' territories. The Screening Regulation foresees the further expansion of this concept, to create a liminal legal space in which Member States may attempt to evade human rights obligations that would usually apply to TCNs arriving in their territory. In other words, by using the concept of 'non-entry', the Regulation means to enhance the process of separation of 'territory' from 'legal order', which is in contravention with primary EU law.

## Lack of access to asylum and procedural guarantees due to the fiction of 'non-entry'

The fiction of 'non-entry' has been applied by Italy in airport transit zones, where it played a key role in the 'migration management' (see ASGI - In Limine, 2021). Border authorities use this fiction to simplify the procedures of expulsion of foreign citizens. The lack of a clear legal definition of transit zones has led to a worrying ambiguity upon which the illegitimate practices of refusal of entry and detention have been built. Border authorities, who consider these areas as extraterritorial, thus act as if they were free zones exempt from the application of constitutional, national and international standards for the protection of fundamental rights. Such an interpretation is untenable under the rule of law, since the jurisdiction exercised by the State over such places is not in question. Moreover, such fiction cannot be used to create obstacles to the right to submit an asylum application, as it was ruled by the Court of Rome (decision n. 22917/2019).

## Risk of *de facto* detention connected to the fiction of 'non-entry'

The fiction of 'non-entry' enshrined in Article 4 of the Regulation entails that third country nationals have to be kept in the facilities where the screening is carried out, given that they have not yet been granted access to the territory. The obligation on individuals undergoing screening to remain in the centres and available to screening authorities risks leading to situations of deprivations of liberty amounting to *de facto* detention. In Italy, a similar requirement (contained in the hotspot Standard Operating Procedures), preventing TCNs from leaving the hotspot during the screening procedure, has already led to a situation of unlawful *de facto* detention.

This was the conclusion reached by the European Court of Human Rights (ECtHR) in the 2023 cases of J.A. and others v. Italy; A.B. v. Italy; A.M. v. Italy;

: in each case, the Court found that "the Lampedusa hotspot is a closed area with bars, gates and metal fences which migrants were not allowed to leave, even after they had been identified, thus subjecting them to a deprivation of liberty which was not regulated by law or subject to judicial control". In these cases, the fact that the maximum length of stay in the hotspot was not defined by law, and that the material conditions were considered inhuman and degrading, were also considered relevant factors. In this way, the Regulation is set to legalise processes that have been deemed unlawful by the ECtHR.

## Recommendations

The legally contested fiction of 'non-entry' has been heavily criticised by civil society and legal practitioners. Given the significant restrictions that it poses on the fundamental rights of people on the move, the salient risk of refoulement and the severe inhibitions it places on individuals freedom of movement, Article 4 should be removed. In the situation that it remains, measures must be implemented to prevent arbitrary detention. This entails conducting reception in suitable open facilities, accompanied by well-defined rules regarding detention conditions complete with the legal basis and required safeguards, and guaranteed access to free legal aid. Access to third parties in screening centres should be unconditional and free from any restrictions imposed by authorities or centre management. Finally, a non-exhaustive list of third parties should be included to prevent a narrow interpretation of the law.



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# ARTICLE 6

## Modalities of the Screening:

### What is Article 6?

Article 6 of the Screening Regulation concerns the modalities of the procedures. It specifies that screening should take place in facilities close to Member State borders and be completed within 5 days from the first contact of the TCNs with the authorities. Crucially, the article allows for the extension of this deadline, up to 10 days in total, in “exceptional circumstances”. This is defined as situations in which a “disproportionate number” of TCNs need to be screened at the same time. The article also outlines the six different elements which are included in the screening process: (a) preliminary health and vulnerability check (b) identification (c) registration of biometric data in the appropriate databases (d) security check (e) the filling out of a debriefing form and (f) referral to the appropriate procedure, including the asylum process.

### Case Study

The Closed Control Access Centre (CCAC) in Samos, Greece, is a relevant example when considering how Article 6 of the Screening Regulation functions in reality. The CCAC is the site designated for the reception and identification of asylum seekers on the island of Samos. Under Greek law (Articles 38(2)-43, 4939/2022) these procedures encompass five stages similar to those outlined in Article 6 of the Screening Regulation. Research by BVMN member organisation I Have Rights (IHR) has found that practices in the CCAC routinely violate Greek and EU law. For example, TCNs held in the CCAC are routinely denied access to legal information, the registration and identification procedures are used as a justification to arbitrarily de facto detain people for extended periods of time, and vulnerability assessments are performed too late and frequently without a psychosocial examination. It is therefore likely that Article 6 will have far-reaching implications in practice, not only on Samos but also at the borders of other Member States. Identified detrimental impacts include prolonged detention in screening facilities and limited access to safeguards and support for persons undergoing screening.

### Risk of systematic prolonged *de facto* detention within screening facilities

Current practice in Samos CCAC suggests that the deadlines for completion of screening outlined in Article 6(3) of the Screening Regulation are extremely unlikely to be fulfilled, potentially leading to the systematic extension of deadlines, resulting in prolonged detention for all asylum seekers awaiting the completion of the screening procedure. Under Greek law (Article 40, 4939/2022) third country nationals or stateless persons are subjected to a “restriction of freedom” for a maximum of 25 days for the reception and identification procedures. This amounts to *de facto* detention, as assessed by the European Commission in a pending infringement proceeding against Greece.

However, practice on Samos indicates that the situation is far worse - authorities frequently fail to meet the deadlines to identify applicants as per Greek law, instead taking between 25 days and 1.5 months to complete the identification and registration of applicants, which constitutes just two of the five stages of screening outlined in Article 6(6) of the Screening Regulation. Research by IHR indicates that third country nationals arriving in the Samos CCAC have been unlawfully detained for up to 60 days in some cases, while awaiting the completion of the screening procedure. Given this evidence, the deadlines for screening outlined in the proposed Regulation are extremely unlikely to be fulfilled, with potentially detrimental consequences including extended *de facto* detention of TCNs undergoing screening.

The inclusion of a clause within Article 6(3) permitting the extension of deadlines for screening in vaguely-defined “exceptional circumstances” is highly concerning as it risks overuse by the Member States. The Samos authorities frequently deploy a similar existing “mass arrivals” clause under Greek law. For the last year and a half, and despite arrivals to Samos being comparatively much lower than over the last seven years, the authorities have frequently claimed to be in a state of mass arrivals. This has allowed the authorities to take steps to reduce pressure on Samos state actors by transferring applicants to under-resourced camps on the Greek mainland. There are therefore serious concerns that without a clear definition of “exceptional circumstances” and/or “disproportionate number” in Article 6(3) of the proposed Regulation, Member States are likely to use this clause to reduce pressure at the borders by claiming “exceptional circumstances” are occurring, thereby extending the legal time frame and prolonging the detention of TCNs undergoing screening.

### **Delays or non-implementation of vulnerability screenings**

There are serious concerns that the vulnerability assessment foreseen in Article 6(6) will not be carried out within the given time limits, as indicated by the current practice in Samos CCAC. All asylum seekers in the CCAC are required, by law, to undergo a vulnerability assessment. However, due to the lack of a permanent doctor in the facility, assessments either do not occur or take place weeks or even months post-arrival. It therefore seems highly unlikely that vulnerability assessments will be completed within the 5 or 10 day maximum period as envisaged in the Screening Regulation. The current wording of Article 6 risks either that some of these essential elements will not be undertaken and/or that the screening procedure will require more than a maximum of 10 days, leading to prolonged detention of vulnerable persons.

### **Substandard conditions within screening facilities during prolonged *de facto* detention**

The practice in the Samos CCAC raises serious concerns regarding the conditions in which asylum seekers may be held during extended periods of *de facto* detention. In the CCAC, people are detained in overcrowded and inhuman conditions. Asylum seekers detained there have reported feeling “humiliated” as they are required to queue for many hours a day to receive food. Residents are accommodated in overcrowded containers with some forced to sleep on the floor. Restrictions on access to clean water have severely impacted hygiene standards, leading to outbreaks of scabies and other infectious diseases. The prevalence of inhuman conditions within the CCAC raises serious concerns regarding the impact of prolonged detention in screening facilities on people on the move.

## Recommendations

Given the current practice in Samos of systematic prolonged detention up to, and in some cases exceeding, the maximum timeframes outlined in law, we strongly advocate for the removal of extension periods in Article 6(3). It is evident from practices on the Greek islands that extension periods are overapplied and risk leading to systematic prolonged detention of TCNs. Failing this, the safeguards in this paragraph should be strengthened, with clear definitions of “exceptional circumstances” and “disproportionate number” so as to limit the possibility for excessive use by Member State authorities. If the provisions regarding “exceptional circumstances” cannot be removed from the Screening Regulation, specific details regarding the mechanism for notifying the European Commission and the procedures that follow must be clarified.

The addition of Article 6(6d) from the Parliament position would ensure safeguards by mandating Member States to provide adequate conditions in line with the Charter for individuals undergoing screening is essential. To avoid the unlawful detention of asylum seekers and any breach of international law (including Article 31 of the 1951 Refugee Convention), the removal of any provision requiring the detention or restriction of freedom of people on the move awaiting the completion of a screening procedure is necessary.



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# ARTICLE 6

## Access to Free Legal Aid

### Introduction

The only place in the Regulation where provisions for access to legal aid are considered are under Article 6(5b) of the Parliament position which states:

*“Organisations and persons providing advice and counselling, including legal assistance and representation, shall have effective access to third-country nationals, in particular to those held in detention facilities or present at the border crossing points, including transit zones, at external borders.”*

Nowhere else have legal guarantees been provided for individuals undergoing screening, and at the current stage of negotiations it is unclear whether or not this will be legislated for. This would violate individuals' rights to access effective remedies and justice under the Charter, contributing to the erosion of the rule of law in the EU whereby secondary legislation violates primary EU law.

### Lack of access to legal aid in practice

Lack of access to legal aid is problematized in practice by the geographical location of detention centres - these are often in border areas, which are remote and inaccessible, impacting the accessibility of CSOs, experts, and other service-providers. This practice is already evident in Bulgarian transit centres.

On March 1, 2023, Bulgaria and Austria initiated a joint action plan aimed at 'preventing irregular migration'. In March 2023 simultaneous EU Pilot Projects were set up with Bulgaria and Romania for fast asylum and return procedures, with delegated funds of EUR 45 million for Bulgaria and EUR 10,8 for Romania. Both the initial project with Austria and the follow-up pilot project with the European Commission are preparations for substantial changes in the overall protection and return system in Bulgaria with a view to applying the, now almost finalised, new EU Pact on Migration and Asylum. Despite the significance and importance of these processes, which will have a strong impact on the ability to guarantee basic human rights to people on the move, preparations are already underway in Bulgaria with scarce information about the developments.

A progress report released by the European Commission stated that a “test spot” for fast-track asylum and return procedures was designated as the transit centre in the village Pastrogor. Pastrogor is located in the vicinity of the Bulgarian-Turkish border, and in 2017 it was renewed in its entirety and announced as a closed asylum centre. The remote location of the centre means that access to services, including legal, social and psychological support, is restricted. While the operational details of Pastrogor are yet to be fully analysed due to a lack of transparency around the details, access to legal aid is already being diminished.

During the state of emergency triggered by the Covid-19 pandemic, lawyers' access to detention centres and participation in court hearings on detention cases were among the first to be discontinued. Similarly, the Centre for Legal Aid Bulgaria's (CLA) information sessions for detainees in detention facilities were also suspended throughout the pandemic. In 2023, when CLA requested to restart information sessions, they were denied by the Migration Directorate.

Despite legal aid being a guarantee in the EU Charter (Article 47), in practice, this right is not protected. Additional barriers, such as the remote locations envisioned for screening centres and extended so-called 'crisis' events, make it easy for states to derogate from the asylum acquis and violate fundamental rights. This is only set to be augmented with screening procedures that take place in border regions, which are notoriously difficult for Civil Society Organisations (CSOs) to access. With accelerated procedures applied en masse in Bulgaria, procedural safeguards are increasingly diminished, placing significant restrictions on access to asylum.

## Recommendations

Maintaining the Parliament position's provision under Article 6(5b) is absolutely necessary in order to prevent secondary legislation from superseding primary EU and international law. Without free legal aid, individuals will be left without the ability to exercise their rights or to challenge violations of them. The Bulgarian case demonstrates how such dynamics are already underway and pose a significant risk to the rule of law in the EU.



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# ARTICLE 7

## What is Article 7?

Article 7 of the Screening Regulation proposes a mechanism for monitoring compliance with fundamental rights at the Union's external and internal borders. The article states that the mechanism should ensure alignment with EU and international law during the screening procedure, particularly in relation to detention, access to asylum and compliance with the principle of non-refoulement. Importantly, the monitoring mechanism must be independent according to guidelines issued by the EU Fundamental Rights Agency (FRA). The legislation further allows Member States to invite relevant non-governmental organisations to participate, if they so wish.

## Why have an Independent Monitoring Mechanism?

Given the mounting evidence of human rights violations committed by state authorities at border regions or in relation to border procedures, particularly in Greece and across the Western Balkans, the necessity of a functioning monitoring mechanism is evident. With extensive documentation of pushbacks, testimonies detailing inhuman and degrading treatment in detention facilities, and reports of procedural violations such as the denial of access to medical care or legal support in reception facilities, the scope of fundamental rights violations is substantial. The principal instrument for the implementation of Article 7 is the Independent Monitoring Mechanism (IMM) that was introduced by European Commissioner for Home Affairs, Ylva Johansson, in 2020. Civil society actors welcomed the proposal, anticipating it to serve as a crucial mechanism to fill the void of accountability that has allowed perpetrators to act with impunity. However, as it is currently envisioned in Article 7, the mechanism lacks the required independence from national authorities and concrete measures to enforce accountability. Instead, it risks being a superficial indicator of human rights that becomes an instrument of symbolic politics.

## Accountability and scope of operations

In 2018, the EU funded the establishment of an IMM in Croatia, where such a mechanism was put to the test. However, several years after its establishment, and in its current form, it is clear that it is not equipped to effectively monitor compliance with fundamental rights. The first substantial setback was revealed in 2020, where misspending, underreporting and a coverup attempt by the Croatian authorities and the EU Commission came to light indicating that they had utterly failed to commit to the mechanism two years after EU funding was earmarked. On the contrary, in the same time period, reports of abuse, theft and the humiliation of people on the move proliferated. The IMM eventually entered into force on 8 June 2021. However, the ongoing reportage of human rights violations at Croatian borders since then, and the inability of the IMM to “trigger concrete action should it identify a risk of or receive allegations of rights violations” strongly indicates that it does little to raise protection standards at EU borders. After its implementation, BVMN documented 255 pushbacks impacting 2,730 individuals at Croatia's borders with Serbia, Montenegro and Bosnia and Herzegovina.

Under the current Croatian IMM, authorities enforcing border control are informed in advance about an upcoming inspection. This procedure allows monitored authorities to adapt their practices to conform with the standards set out by European and international law. The scope of monitoring missions is also limited to official facilities, border crossings and formal procedures when the majority of fundamental rights violations are committed outside of these geographical or procedural spaces. The IBMM can deploy a maximum of twenty missions per year and is thus extremely restricted in its ability to monitor compliance with fundamental rights. Lastly, even if unlawful practices have been documented, there has been no mechanism established to hold authorities responsible and seek justice for victims, both of which are essential for establishing a functioning IMM. Considering these concerns when analysing the provisions in Article 7 a significant absence of detail is revealed - particularly as pertains to the IMM's scope. This includes aspects such as access to key locations, the potential for unannounced visits, and a suitable procedure for filing complaints. The scope of the mechanism is of particular relevance, the Regulation only foresees it applying to the screening centres themselves when it is clear that independent monitoring at the border is in dire need. In practice, the mechanism could result in providing Member States with yet another opportunity to evade accountability.

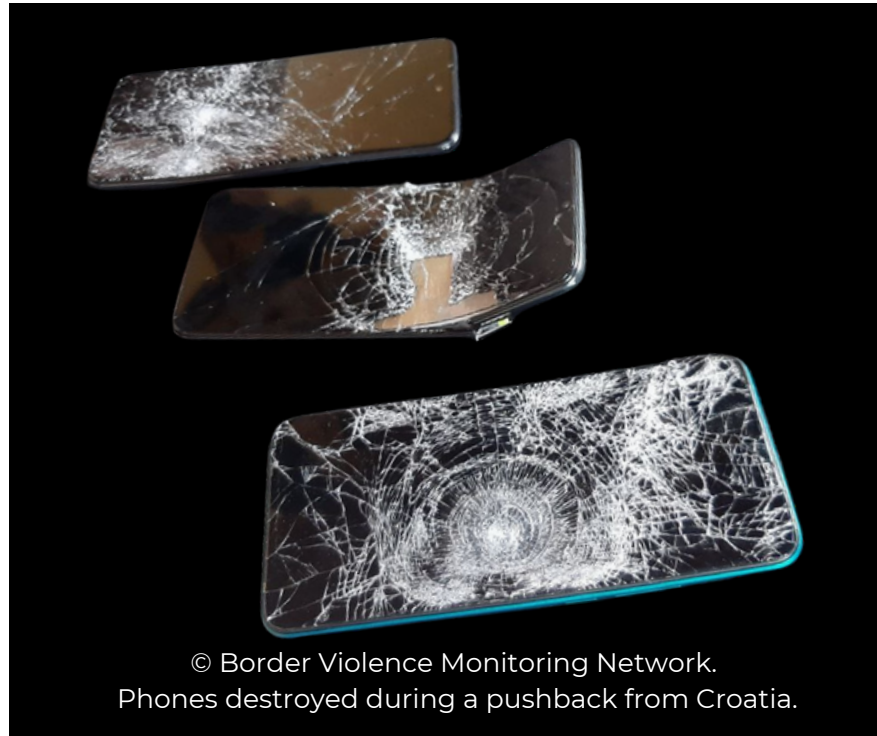
## True independence of monitoring mechanisms

To be truly effective, and not just a tool in Member States' repository to obscure human rights violations, an IMM must comprise diverse actors distinct from both border authorities and the state. The Croatian Ministry of Interior (Mol) – whose officers and activities the IMM is supposed to monitor – effectively controls the operations and funding of the IMM. Thus, the *independence* of the mechanism is in fact highly *dependent* on the institution it monitors. Many issues related to accountability and the limited scope of operation can be traced back to this dependence. The Mol's influence extends to deciding which actors are part of the IMM. None of the stakeholders selected by the Mol are experienced in or have shown commitment to advocacy for the rights of people on the move or human right based border governance. Expertise in these fields, or a minimum requirement of training is vital for raising protection standards of people on the move. In addition, the participation of non-state actors, including national Ombudspersons and CSOs working in support of people on the move, increases the capacity of a monitoring mechanism to be independent. These issues are apparent in the existing system in Croatia and should serve as lessons for the Screening Regulation. However, Article 7(2) allows for the discretionary inclusion of non-governmental bodies in the monitoring mechanism, giving Member States the authority to decide. This provision risks that the mechanism will lack true independence.

## Recommendations

Given the presented evidence, and drawing from a practical example of a country implementing an IMM, it is clear that the monitoring mechanism outlined in Article 7 will face severe limitations in both scope and accountability without genuine independence from state actors. If other Member States are allowed to follow the Croatian model, there is a substantial risk of exacerbating the current accountability gap, enabling authorities to commit severe human rights violations against people on the move. All this, whilst claiming they are sufficiently monitoring such violations. While a truly independent and effective monitoring mechanism holds promise for enhancing compliance with fundamental rights, it is crucial to explicitly outline the methods and actors responsible for its implementation in the Screening Regulation.

The Parliament's mandate makes significant improvements to the Commission's Proposal, legislating for the mandatory participation of national human rights institutions and international organisations in the management and operation of the mechanism, as well as stating that Member States shall provide relevant bodies full access to relevant locations, individuals and documents to ensure that the mechanism can fulfil their fundamental rights monitoring obligations. Furthermore, increasing the scope of the mechanism to border surveillance activities is of vital importance. These provisions must be included in the Regulation to avoid the proliferation of human rights abuses against people on the move and replication of the Croatian IMM "scandal".



# ARTICLE 9

## What is Article 9?

Article 9 of the Screening Regulation lays out provisions for health and vulnerability checks that individuals must undergo in order to identify any specific measures or procedural needs for the screening process. The legislation states that health checks should indicate the need for immediate care or isolation on public health grounds, whereas the vulnerability assessment should identify special reception requirements for persons in vulnerable situations, such as victims of torture. Where appropriate, the Regulation requires people to receive timely and adequate support. Importantly, Article 9 provides health and vulnerability checks for people undergoing the screening procedure at the border as per Article 3. However, those subject to screening within Member State territories, as per Article 5, will only be subject to a preliminary medical examination where it is deemed necessary based on the circumstances (Article 9(4)).

## Lack of health and vulnerability checks for persons screened under Article 5

Article 5 extends the application of the Screening Regulation to people found within Member State territory who are suspected to have entered in an unauthorised manner. As final negotiations around the New Pact are ongoing, significant concerns around this provision have been expressed by civil society, in particular, that this would encourage widespread discriminatory profiling, arbitrary apprehension and *de facto* detention. On this basis, we strongly advocate for the deletion of Article 5, however, in the circumstance that it remains, the safeguards related to health checks and vulnerabilities must apply. Yet Article 9 does not apply a vulnerability check whatsoever to this group, and only legislates for medical checks in certain circumstances. Furthermore, the proposal does not provide a definition for such circumstances, nor specify what factors would lead to screening authorities deeming the health check necessary. This vague provision therefore relies on the intention of Member States to ensure adequate health checks are carried out and assess when they are needed. When embedded in legislation, this flexibility may allow Member States to circumvent protection responsibilities according to their internal political agendas or associated financial costs.

Research into the practice of screening within Reception and Identification Centres (RICs) on the Greek territory by Mobile Info Team (MIT) and Refugee Legal Support (RLS) indicates that, even where vulnerability and health checks are mandatory in the law, they are likely to be rushed or omitted in times of high arrivals. This practice in Greece has led to severe consequences for persons who were not identified in the vulnerability check, including cases of individuals suffering from post traumatic stress disorder (PTSD) and victims of torture whose special support needs were not identified during the screening process. Given this evidence, it is hard to imagine that screening authorities will guarantee that health checks are carried out thoroughly when the legislation provides loopholes to bypass them.

## Qualified professionals to carry out health and vulnerability checks

In addition, Article 9 does not specify which authority is responsible for carrying out preliminary medical examinations. This leaves the decision for allocating responsibility at the discretion of Member States, potentially placing staff with no experience or capacity to assess the health or vulnerability of an individual in charge of a decision that could significantly impact the outcomes and support provided to persons undergoing screening. In current negotiations between co-legislators, the Council have put forward an option whereby medical checks can be done by screening authorities in the presence of a licensed medical professional. This could, in practice, lead to a situation where a person is assessed by untrained border guards in the presence of a nurse, doctor, or paramedic that, besides from inflicting trauma, could constitute severe rights violations.

Some of these concerns are already evident in Greek health and vulnerability screening procedures. Despite Greek law (Article 41(d) 4939/2022) requiring competent medical staff to carry out medical and vulnerability assessments in screening procedures, this is not consistently practised. The notable lack of qualified professionals available to carry out such assessments in screening facilities is a significant problem across Greece. In the mainland RICs, there has in some cases been only one doctor available, and respondents predominantly reported that there was no psychosocial support available during screening procedures. Research by MIT and RLS found that 71% of respondents undergoing screening procedures on the Greek mainland without the support of a lawyer were not asked if they had a vulnerability, indicating a lack of proactivity on the part of screening staff. Respondents additionally reported a lack of competency from staff who did not facilitate a safe environment in which they felt able to disclose information relating to sensitive and personal issues (e.g. past experiences of torture or sexual violence). Consequently, their vulnerabilities went undetected, leading to severe distress, retraumatisation and a lack of adequate support throughout the process. Particularly health conditions and vulnerabilities that are not immediately visible without professional training, but have a serious impact on an individual including critical mental health conditions and issues stemming from sexual and gender based violence (SGBV), went undetected and unsupported.

As pertains to people undergoing screening at the border, defined in Article 3, the problems surrounding access to adequate health and vulnerability checks are extant. Namely, insufficient safeguards remain to ensure that all persons will undergo the necessary assessments to ascertain any medical issues or vulnerabilities. Yet again, these concerns are founded in realities from the Greek model. In the Samos CCAC, since the centre opened in September 2021, no permanent doctor has been appointed and currently one volunteer doctor visits the CCAC on an adhoc basis for around two afternoons per week. This doctor is responsible for carrying out assessments for the entire population of the facility, which at the time of writing is approximately 4,000 people. Considering the critical importance of the vulnerability assessment for the asylum procedure generally and for the identification of vulnerable persons specifically, including for example survivors of human trafficking, this presents significant concerns regarding the detection of cases and guarantees for specific rights in the asylum procedure. As many of the indicators of human trafficking concern the medical and psychological constitution of a person - including gynaecological issues, sexually transmitted diseases (present with 15 of the 53 survivors of human trafficking supported by IHR, 28%) and mental health issues such as suicidal thoughts - these must be assessed by qualified professionals.

The Italian hotspots further demonstrate these issues. Many people arriving in Italy have been subjected to torture, particularly if they pass through Libya or Tunisia. A large proportion of people therefore present a vulnerability that is almost never adequately addressed in the initial phase of screening. Lampedusa and Pantelleria, the main hotspots where screening procedures took place in 2022 and 2023, have no hospitals or adequate medical facilities. Here, screening is predominantly carried out by police authorities and in some cases, doctors, yet there are no psychologists nor experts in trafficking to address the needs of often traumatised persons. In 2022, the ECtHR adopted decisions on interim measures based on the fact that the Lampedusa hotspot is not suitable to receive families with minors due to the lack of adequate measures and staff to address their vulnerability (see Application no. 50256/22; 50246/22).

In light of the significant concerns presented based on existing harmful practices, it is vital that health and vulnerability assessments are carried out by qualified professionals, including doctors, nurses and psychologists, to ensure the detection of vulnerabilities and medical conditions, and ensure that appropriate support is provided. Furthermore, it is of significant importance that any loopholes foreseen whereby border authorities are tasked with carrying out the checks are closed in the Regulation.

### **Provision of immediate and long-term health care**

Another prominent concern regarding Article 9 is the limited provision of healthcare that legislates only for persons with immediate needs. This fails to account for any longer term health conditions that require ongoing medical support, particularly considering that detention periods may exacerbate some conditions (see ECtHR Judgment *Abdi Mahamud v. Malta* Application no. 56796/13, 3 May 2016) and be prolonged in times of crisis. For example, specialised psychosocial support needs consistently go undetected, and children with developmental conditions, chronic psychiatric patients or individuals who are yet to receive a definitive diagnosis are precluded from receiving timely care as it is commonly considered not urgent, with devastating impacts on their health. Considering that asylum seekers are highly likely to have experienced traumatic events prior to departure or throughout their journey - indeed, a recent study by MSF on Greek island Samos found that 40% of patients suffered psychological trauma - only providing for immediate healthcare needs in screening procedures risks grave consequences. In addition, the legislation is repeatedly vague and lacks specificity regarding which conditions constitute requiring immediate care. This once again allows Member States to derogate from their protection responsibilities regarding the implementation of vital safeguards that ensure support for vulnerable groups.

### **Lack of sufficient guarantees in the screening of minors**

With regard to children, Article 9 merely provides that “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”. This provision is not sufficient to ensure the adequate reception and respect of the child's best interest and may lead to provisions that are in contravention with the UN's Convention on the Rights of the Child (UNCRC). Screening controls, in fact, delay the moment when children are properly identified, accommodated and assigned a guardian in cases of unaccompanied minors. This leads to their illegal detention, lack of protection and disregard for the principle of the best interests of the child.



In Italy, ASGI has already highlighted that the application of a fiction of 'non-entry' to children at the borders would be contrary to national law. According to Italian law (L. 47/2017), unaccompanied minors have the right to remain in the territory and cannot be returned. Moreover, Italian law prohibits the detention of unaccompanied children and implicitly prevents the detention of children with families (who are always considered vulnerable).

Nevertheless, children have been *de facto* detained during the implementation of the hotspot approach and the adoption of the Screening Regulation in its current form would only increase the risk of detention and ill-treatment. In 2023, ASGI and some members of Parliament carried out a monitoring visit to the Pozzallo hotspot. They found unaccompanied minors and families housed with adult men in inadequate conditions, with minors kept in a situation of *de facto* detention for several days (on average 36 days), and identified a chronic lack of social and psychological support. There were only three doctors available for more than 400 people, all of them men: ASGI noted that two young girls from Somalia, who were clearly victims of abuse and torture, did not receive adequate care due to the lack of female doctors. During the same monitoring visit, ASGI also visited an "ad hoc hotspot" for unaccompanied minors in Cifali. Although Italian law prohibits the detention of children, the minors are not allowed to leave the centre, which is under constant police surveillance. According to the information gathered by the delegation, some minors are already identified when they arrive at the centre, while others are waiting to be identified. The appointment of a guardian usually takes several days or weeks.

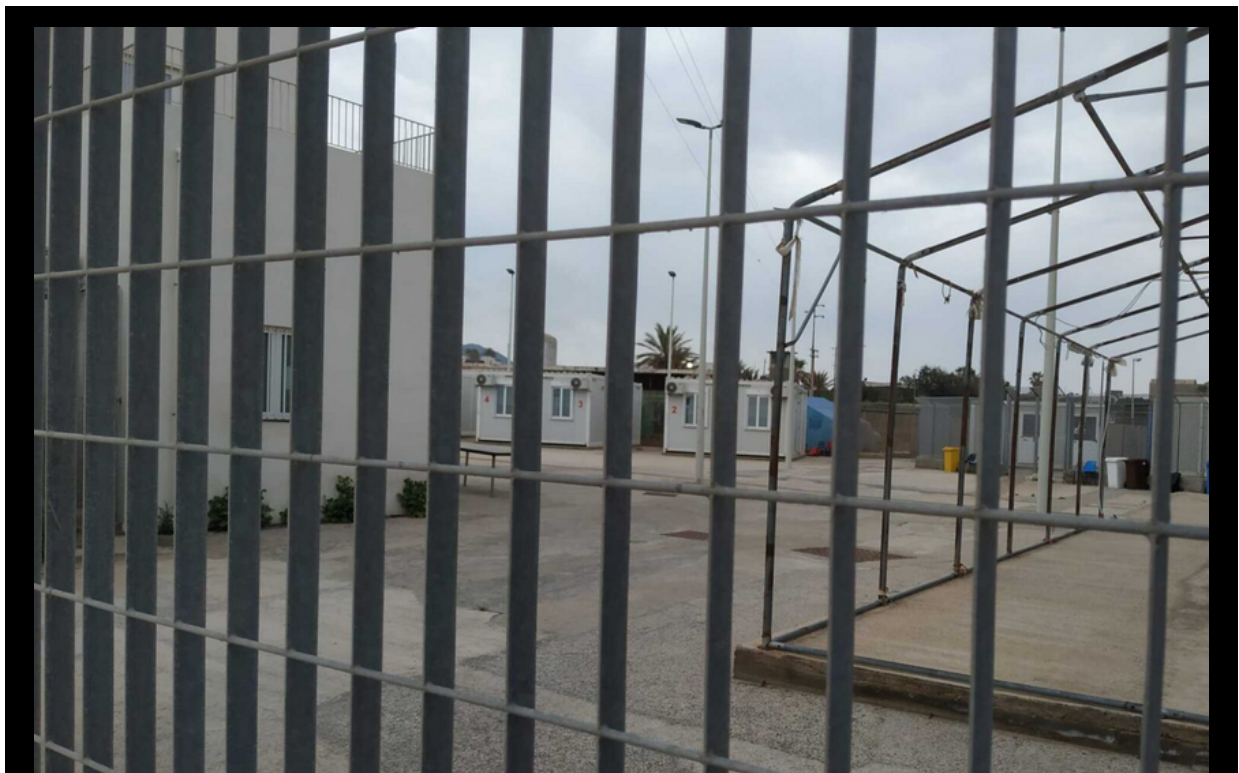
Italy has already been condemned by the ECtHR for the ill-treatment of unaccompanied minors. In August 2023, Italy was shown to have failed to ensure adequate reception conditions for an unaccompanied child with specific vulnerabilities due to previous exposure to violence in the country of origin (application no. 70583/17). The Court found a violation of Article 3 due to the prolonged inaction of the Italian authorities with regard to the child's special needs, in particular the lack of adequate psychological assistance and the failure to place her in an appropriate reception centre. In July 2022, the ECtHR had already condemned Italy for receiving a child, wrongly considered as an adult, in a centre where he was subjected to inhuman and degrading treatment due to the conditions of overcrowding, widespread violence and lack of sanitary facilities (application no. 5797/17). The Court underlined the lack of effective remedies under Italian law to challenge the quality of reception conditions and incorrect age determination procedures. These judgments highlight the failure of the Italian reception system to address the specific needs of children, but also the serious potential consequences of incorrect age determination procedures, a situation likely to be exacerbated in summary screening procedures conducted from a situation of deprivation of liberty.

## Recommendations

In the situation that Article 5 of the Screening Regulation is not deleted despite the Parliament's position and strong backing from civil society, Article 9(1) should ensure that all third country nationals subject to screening procedures, including those submitted to procedures within Member State territories under Article 5, undergo both a medical examination and vulnerability assessment carried out by a qualified professional to ensure support needs are properly identified. As it does not appear possible to guarantee the respect of Article 3 ECHR with regards to provision of appropriate medical care if screening procedures only provide for immediate healthcare, Article 9(1) should be expanded to include the identification of both immediate and long term healthcare needs.

Furthermore, given the evidence brought by MIT, RLS and IHR pertaining to the harmful practices carried out in Greece, vulnerability assessments and medical examinations should take place in a private space with the presence of a relevant, trained translator to ensure that individuals undergoing screening are able to express themselves clearly and comfortably. Finally, to guarantee that such checks are completed consistently and to an adequate standard, a monitoring mechanism should be implemented to ascertain whether needs were met and follow up support is provided to vulnerable cases and for both physical and psychological medical needs. That monitoring mechanism should follow the guidelines laid out in the chapter of this paper regarding Article 7 of the Regulation.

With regard to children, in light of the evidence brought by ASGI, we recommend that the fiction of 'non-entry' remains optional, as per the Parliament's amendment. All children should immediately be granted access into the territory and accommodated in appropriate centres, and never in detention or *de facto* detention. Moreover, as per the Parliament's amendments, the screening of children must take place in the presence of a guardian, who should be appointed immediately.



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# ARTICLE 11

## What is Article 11?

Article 11 of the Screening Regulation lays out provisions for security checks that individuals must undergo as a part of the screening procedure. The legislation states that such checks are to verify that the person does not pose a security risk, and can encompass both the person and the objects in their possession. The security check entails querying relevant national and Union databases such as the Schengen Information System (SIS), the Entry/Exit System (EES), the European Travel Information and Authorisation System (ETIAS) and its 'watch list', the Visa Information System (VIS), the ECRIS-TCN system, Europol data and Interpol databases. The legislation dictates that the 'screening authorities' shall carry out these checks; Article 2 (1) (11), states that this refers to all competent authorities designated by national law to carry out one or more of the tasks under the Regulation.

## What are the risks associated with Article 11?

It is pertinent to analyse the 'security check' provisions in the Screening Regulation within the context of the 'EU travel intelligence architecture', or the interoperable database model. This is an ambitious and far-reaching plan that, despite repeated delays, will eventually lead to the integration of various EU databases, whilst also interconnecting those databases with other data sources such as those maintained by Europol and Interpol. It is likely that this architecture will then serve as a basis for the future integration of other European and international data sources. Therefore, any legal measures requiring consultation of systems through the interoperability architecture requires strict limits and stringent controls to avoid any possible abuse or misuse. This does not merely concern rules governing the use or consultation of the systems themselves, but also the supervisory authorities tasked with monitoring their use, who require sufficient means to undertake their roles.

Such interoperability has repeatedly been identified as cause for concern by human rights organisations and activists. GDPR violations have been identified in cases where Frontex and Europol have intentionally circumvented data protection safeguards to collect data on people crossing borders. One key example of this is the implementation of Processing Personal Data for Risk Assessment (PeDRA) - a joint project between Frontex and Europol that sought to use data collected in Frontex's 'debriefing' interviews with people on the move to feed Europol's databases and analyses. The European Data Protection Supervisor, W. Wiewiórowski, issued critical opinions on the way Frontex and Europol handled GDPR and relevant safeguards and the project was put on hold as a result. Furthermore, rampant abuses of digital and privacy rights have been reported in current Europol databases. Similarly with Interpol, in 2023 25 individuals and organisations signed a letter regarding Turkey's continuous misuse of Interpol systems, which were being used to evade formal extradition processes and return individuals to Turkey where they faced political reprisals. In allowing the screening authorities, under Article 11(2), to consult Interpol databases without sufficient safeguards there is a manifest risk that information will be revealed to the country who entered the alert. This could allow authorities of that country to know the whereabouts of citizens who have fled, opening up the possibility of repressive measures in a variety of ways. Under the Council and Commission positions, there are no safeguards to guarantee that this would not happen.

Furthermore, no provisions are listed by which the individual would be informed of their data protection rights during screening procedures, opening them up to risk of being violated without the person's knowledge in violation of the GDPR. Consequently, if a person is unaware of their rights under such checks they are both unable to exercise them and to pursue mechanisms of redress in cases of violations.

## Recommendations

The Parliament mandate goes some way to protecting people on the move in the context of Interpol database checks. Article 11(4b) proposed by the Parliament states that, “any consultation of Interpol databases [during the screening process] shall be performed only when it is ensured that no information is revealed to the owner of the Interpol alert.” If that is not possible, “the screening shall not include the consultation of the Interpol databases.” This measure must be included in the Regulation in order to protect against potential abuse of interoperability with Interpol data, however the Commission still holds the position that screening procedures should consult Interpol databases because the individual being checked will have left the country. This underestimates the capacities of those who abuse Interpol databases and quite clearly fails to safeguard against the abuse of alert information to undermine an individual's human rights. More broadly, linking databases related to migration, such as the Eurodac, with those housing information regarding criminal acts is a false conflation of movement and criminality that furthers an agenda towards the criminalisation of movement as a whole.

If ‘screening authorities’ are to be given access to personal data, there must be an obligation on those authorities to be publicly declared - either through the EU Official Journal, on an EU website, or with information provision to the person being subject to screening - in order to make the exercise of data protection rights and access to remedies possible. The person undergoing screening must be informed of those rights before being mandated to undergo checks, and this must be done in a language the person can understand. Without these safeguards, individuals will not have the information necessary to exercise their data protection rights, nor to appeal violations if and when they occur, constituting a violation of the GDPR.

# ARTICLE 13

## What is Article 13?

Article 13 of the Screening Regulation lays out provisions for recording an individual's data via a form upon completion of the screening procedure. The competent authorities are required to log specific information including the person's name, date and place of birth, gender, nationality and languages spoken, as well as the reason for their "unauthorised arrival and entry". The legislation also specifically mentions that information pertaining to routes travelled by the individual (13c) and assistance provided by a criminal organisation (13d) should be included on the screening form. This form will then be used to ascertain the outcome of the screening procedure under Article 14, and subsequent process that individuals are referred to.

## The Italian Case

Information collected during the screening process is used to ascertain whether or not a person's claim for international protection is well-founded. Based on this assessment, the person will either be directed to normal procedures or accelerated procedures at the border which funnel directly into return mechanisms. Therefore, the form referred to in Article 13 constitutes the mechanism whereby such information is transferred to authorities determining which procedure they should be referred to. The form, then, is of critical importance as the procedures may have a significant impact on the situation of a person long term, and the possibility for them to safely obtain protection as we maintain that the 12 week border procedure envisioned in the Asylum Procedures Regulation (APR) is insufficient for the full individualised assessment of claims. However, under the current proposal, there are no provisions laid out in Article 13 or 14 to challenge the outcomes of the screening procedure, not the information contained in the screening form. A similar system has emerged as one of the most problematic aspects of the hotspot screening procedure in Italy. There, information collected during identification is recorded on a pre-printed form containing a list of pre-established 'reasons' for entry - the so-called foglio notizie. On the basis of the foglio notizie, people are similarly channelled into the asylum or deportation procedure. The latter is usually carried out on the basis of a 'deferred refusal of entry'.

## Country of Origin and the Screening Form

ASGI has consistently identified and reported on the infringements of fundamental rights resulting from the utilisation of a screening form, which serves as a means to limit access to asylum and the right to defence in the context of return procedures. The practice of screening, as witnessed in Italy, has had particularly concerning consequences for people from certain countries, who have been found to be arbitrarily excluded from access to international protection procedures on the basis of the country of origin recorded in the form. Concerningly, this could lead to the gradual 'racialisation' of the right to asylum. By barring certain nationalities from exercising this right, border authorities are tasked with executing screening powers that extend beyond their initial identification mandate.

The assessment of an asylum application should be made only by competent authorities designated to do so, and cannot be carried out by border police or 'screening authorities'. However if, prior to the filling of the screening form, people are not adequately informed about their right to apply for asylum, their applications may not be assessed individually and risk reflecting a tendency to anticipate the assessment of people's rights on the basis of their nationality. The use of a basic form to dictate the outcomes of the screening procedure therefore poses a serious risk to fundamental rights and access to asylum, potentially reducing procedures to a discriminatory and oversimplified assessment that does little to reflect the often complex situation of applicants. Given these practices, it is difficult to see how the Charter of Fundamental Rights of the European Union (CFREU) will be respected and persons will not be discriminated against as the Screening Regulation explicitly states (Recital 21).

### **The non-issuance of a copy of the screening form**

Currently, TCNs in Italy do not receive a copy of the foglio notizie, nor are they invited to verify, question or correct the information contained therein. Moreover, the result of the check is not included in a formal administrative order. Such practices have critical implications for the right to defence. The non-issuance of a copy of the foglio notizie prevents individuals from being aware of their legal status, from communicating it to their legal representatives and from verifying whether their application for international protection has been correctly registered and, consequently, taken into account by the authorities. This result is particularly worrying if the person is subsequently refused entry, meaning that they do not benefit from the procedural guarantees provided for in the Return Directive. In addition, the removal is usually carried out before the person has the possibility to appeal against the decision.

Furthermore, during the identification process in Italy, the information is only collected by the police authorities and the final module on which the data is registered is not double-checked by the person with the assistance of an interpreter. According to the National Guarantor for people deprived of their liberty, between 2017 and 2019 people subject to screening procedures signed a completely blank sheet of paper, without having filled it in beforehand, and with no guarantee that what they had declared was actually understood and reflected in the documents as they intended. The use of the foglio notizie as a prerequisite for a deferred refusal of entry order can also lead to unlawful expulsions, as was the case decided by the European Court of Human Rights in J.A. and others v Italy. The Court found that the information sheet used in the Lampedusa hotspot could not be qualified as a proper interview, but instead as a simple questionnaire, formulated in an extremely concise manner and, in any event, difficult for the foreigners concerned to understand. Therefore, despite the completion of the module, the expulsion of the people on the move was not individualised and thus a collective expulsion took place (par. 107-115).

Finally, it should be underlined that the Italian Supreme Court has ruled at least twice that the information contained in the foglio notizie concerning the lack of will to apply for asylum can be refuted, since the police authorities do not have the power to exclude applicants from the formal asylum application procedure (Court of Cassation n. 11309/2019; Court of Cassation n. 23533/2023). In addition, the Court stated that the judge responsible for the expulsion has the duty to verify that, before signing the foglio notizie, the person was properly informed of the possibility of applying for international protection and was assisted by an interpreter.

## Recommendations

In view of the extensive evidence indicated by the case of Italian hotspot procedures, Article 13 does little to procedurally protect the right to asylum, particularly the right to an individualised assessment and to administrative and judicial review. Despite the considerable impact on an individual if the screening form is incorrectly recorded, both Articles 13 and 14 lack elements relating to the guarantee of information provision regarding status and outcomes of the screening procedure, as well as the form being recorded in such a way that is amenable to administrative and judicial review during any subsequent procedure. Instead, the Commission's proposal focuses largely on obtaining intelligence related to the journey's that people undertake, and specifically, the involvement of criminal organisations and smuggling operations. Finally, the Regulation makes no mention of recording the outcomes of the vulnerability assessment and any special reception of procedural needs in the screening form, nor the outcome of the medical examination. The Parliament's amendments, including both of these elements, as well as the obligation to provide the person with a copy of the screening module, are essential to ensure the protection of fundamental rights.



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# CONCLUSION

BVMN maintains that the entire New Pact on Migration and Asylum does very little to remedy the 'crisis of implementation' of the Common European Asylum System in Member States over the last decade, nor the failure of the principle of solidarity. Instead, it envisions a system whereby rights violations against people on the move that have been proliferating at the EU's borders are set to be legalised, going against EU law and the Treaties. The Screening Regulation is just one part of this, and foresees procedures that amount to *de facto* detention en masse, of children and families alike, the further conflation of migration and illegality, and insufficient safeguards for vulnerable persons and fundamental rights on the whole.

Whilst we do not support the implementation of the Regulation, as political negotiations are speeding towards closure in the coming weeks it is necessary to ensure that - at the very least - rights are protected and individuals have access to effective remedies when they are violated. As such, the paper has identified key provisions to be strengthened or included on each of the main articles of the proposal. The analysis has looked to the realities that are ongoing in external Member States like Greece, Italy, Croatia and Bulgaria to elucidate why such provisions are needed. These examples should serve as a stark warning of what the implementation of the Screening Regulation will mean in practice for the rights of people on the move. What we have revealed is a dangerous lowering of safeguards, and a proliferation of legal loopholes that legislates for and normalises rights violations in the EU.