AD HOC QUERY ON 2021.7 Medical claims and expulsion

Requested by EMN NCP The Netherlands on 9 February 2021

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Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden (22 in Total)

Disclaimer:
The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

1. Background information

Medical claims and expulsion.
Expulsion of third-country nationals does not take place as long as it is not safe to travel in view of the health condition of the third-country national or that of one of his family members. Also expulsion does not take place if the third-country national will be in a medical emergency because there is no medical treatment in the country of origin.

The main law dealing with migration in the Netherlands is the Aliens Act 2000 (Vreemdelingenwet, Vw). In this law, Article 64 provides for the legal framework of medical migration cases, allowing for a temporary legal stay on humanitarian grounds called “postponement of departure”. This temporary legal stay will be granted if it is not safe to travel in view of the health condition.

Due to the implementation of the ECtHR Paposhvili case law, The Netherlands changed their national policy and procedures in order to be in line with this case law. The 2016 ECtHR judgment on the Paposhvili case obliges the Dutch authorities to assess – in addition to the availability of a treatment or medication – the accessibility of medical care in the country of origin before proceeding with the return of a rejected applicant. The burden of proof for non-accessibility rests with the applicant.

Paragraph 190 of the case law of 13 December 2016 of Paposhvili v Belgium: The authorities must also consider the extent to which the individual in question will actually have access to this care and these facilities in the receiving State. The Court observes in that regard that it has previously questioned the accessibility of care [...] and referred to the need to consider the cost of medication and treatment, the existence of a social and family network, and the distance to be travelled in order to have access to the required care [...].

Paragraph 191 of the case law: Where, after the relevant information has been examined, serious doubts persist regarding the impact of removal on the persons concerned – on account of the general situation in the receiving country and/or their individual situation – the returning State must obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3 [...]. When assessing removability in case there is a need for medical care after return, authorities must also consider the extent to which the individual in question will actually have access to this care and these facilities in the receiving State, considering the cost of medication and treatment, the existence of a social and family network, and the distance to be travelled in order to have access to the required care.

We would like to know how other countries implemented this case law and what your experiences are so far. How does your Member State carry out this assessment according to paragraph 190 and 191?

2. Questions

1. Did the Paposhvili case result in new national regulations for the assessment of accessibility of medical care? Y/N.

2. If yes, what was changed exactly and how in practice were your assessment procedures altered? Can you describe how the changed practice meets the requirements for assessing access to medical care as set in the Paposhvili case law paragraph 190? If no, can you describe how the existing procedures and practices take into account these requirements?

3. In your Member State, does the burden of proof that medical care is accessible lie with the Member State or with the third-country national (in terms of the cost of medication and treatment, the existence of a social and family network, and the distance)?

4. If after the assessment (question 2) serious doubt persists regarding the impact of removal due to questions about the accessibility of medical care, how does your Member State obtain individual and sufficient assurance from the receiving state in order to ensure access to the care (as stated in paragraph 191) and which authority is in charge of this?

5. How does your Member State handle the outcomes of the procedure to obtain individual and sufficient assurances of access to medical care, both in case of a positive and of a negative outcome?

6. How many cases did you asses and what was the average completion time of the assessments?

We would very much appreciate your responses by **9 March 2021**.

3. Responses

[1]

		Wider Dissemination[2]	
	EMN NCP Austria	Yes	1. In Austria, no legal changes were made in connection with the above-mentioned case, because all grounds that could speak against a removal according to the ECHR already had to be examined before the ECtHR decision (cf. https://www.parlament.gv.at/PAKT/VHG/XXV/A/A_02285/fname_670108.pdf, p. 77). --- Source: Ministry of the Interior 2. n/a

[1] If possible at time of making the request, the Requesting EMN NCP should add their response(s) to the query. Otherwise, this should be done at the time of making the compilation.
[2] A default "Yes" is given for your response to be circulated further (e.g. to other EMN NCPs and their national network members). A "No" should be added here if you do not wish your response to be disseminated beyond other EMN NCPs. In case of "No" and wider dissemination beyond other EMN NCPs, then for the Compilation for Wider Dissemination the response should be removed and the following statement should be added in the relevant response box: "This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further."

			--- Source: Ministry of the Interior 3. According to Art. 18 of the Asylum Act 2005, the competent authorities and courts shall, at all stages of the procedure, ensure that the information relevant for the decision is provided, that the evidence for this information is noted and that all information which appears necessary to substantiate the application is provided, among other things. If necessary, evidence must also be provided ex officio. In addition, the Austrian Supreme Administrative Court stated, with regard to the case law of the ECHR, that the burden of proof for the existence of a real risk regarding individual situations of danger for a person basically lies with that person. At the same time, the difficulties with which an asylum seeker is confronted in obtaining evidence must be taken into consideration and, if the asylum seeker submits a substantiated argument as to why his/her situation differs from that of other persons in the country of origin, a decision must be made in his favour in case of doubt. As far as the general situation in the country of origin is concerned, however, a different approach has to be taken. In this respect, the asylum authorities have full access to the relevant information and it is up to them to establish and prove the general situation in the country of origin ex officio (VwGH 10.8.2018, Ra 2018/20/0314). --- Source: Ministry of the Interior 4. Austria does not seek individual assurances. Well-founded doubts about the availability of the required medical care therefore lead to a stay in Austria. --- Source: Ministry of the Interior 5. Answer not applicable following answer 4.

			--- Source: Ministry of the Interior 6. No data is available on this. --- Source: Ministry of the Interior
	EMN NCP Belgium	Yes	1. Yes. 2. Context: the Paposhvili v. Belgium case regarded a return decision issued to a third-country national who had previously applied for "medical regularisation" (authorisation to stay for medical reasons on the basis of Art. 9ter Immigration Act), but whose request had been rejected. In the Belgian return procedure, the Immigration Office will refrain from removing a third-country national in case of a possible violation of Art. 3 ECHR, in accordance with the principle of non-refoulement. Since the ECtHR ruling, the Immigration Office conducts a separate assessment of Art. 3 ECHR in two specific situations related to the health of the third-country national concerned: when it issues an order to leave the territory together with a decision on an application for medical regularisation that has not been assessed on its merits (due to either non-admissibility or exclusion), and when clear contra-indications for travelling exist. At the moment of interception, when a decision to detain a foreign national in view of return may be taken, the foreign national will be heard and asked questions allowing to assess the risk of a violation of Art. 3 ECHR. In case of detention of a foreign national, an in-depth assessment will be carried out, including a medical examination and medical history. For each detainee, the physician assesses whether s/he suffers from a disease that may have an impact on the risk of a violation of Art. 3 ECHR. If this is the case, the physician assesses whether adequate medical care is available and accessible in the country of origin, if needed by relying on the expertise of the "MedCOI" Unit and its information provided by EASO.

			3. In Belgium, the competent authorities will assess whether or not the medical care is accessible in the country of origin: if the foreign national suffers from a disease that may fall within the scope of Art. 3 ECHR, the physician in the detention center assesses both the availability and accessibility of medical care in the country of origin, if needed by relying on information provided by the "MedCOI" Unit (see Q2), before taking a decision. 4. In this case, an examination will be conducted by EASO and the information sent to the physician in the detention center through the "MedCOI" Unit of the Immigration Office. If the research shows that the disease of the foreign national requires local support, the Immigration Liaison Officers (Ilobel) of the Immigration Office will establish the needed contacts in order to provide this support. In the context of Special Needs, for each case individual agreements are made with the physicians and hospitals in the country of origin. Prior to return, the Immigration Office consults with the physician in the country of origin on the scope and guarantees of the medical care. Consultations on the required care thus do not take place with the host Member State or authority itself, but with medical professionals who will also provide this care upon arrival. If needed, the Immigration Liaison Officers plan visits to hospitals and physicians in order to map the local situation during their missions abroad. They can also develop the needed contacts with medical professionals that may be called upon later on in case of return. Finally, the Immigration Office may also rely on European Return Liaison Officers (EURLOs) present in the countries of origin for contacts with hospitals and monitoring upon return. 5. The assessment of access to medical care may lead to three possible outcomes: – if the required and adequate medication is available and accessible, the return services will be informed through a form and will be able to continue the return procedure, if needed with the medical support mentioned as specific condition for return; – if the required and adequate medication is not available or accessible, but only needed for a limited period of time of 1 year at most, the required medication may be provided and a return considered. In this case, the Immigration Office assesses on a case-by-case basis if the medication can be carried on the airplane or financed or if local agreements can be made.

			– if the required and adequate medication is not available, or available but not accessible or sufficient, the foreign national will not be returned. 6. Belgium can only provide data on the number of cases in which the physician in the detention center established that the foreign national suffered from a disease that could fall within the scope of Art. 3 ECHR and assessed whether adequate medical care was available and accessible in the country of origin, and on their eventual outcome (release or return). There is no information available on the duration of these assessments. Please note that the totals in the table below are based on the data of 4 detention centers only. 2018 2019 **Total number of assessments of medical care 8 25** Releases for medical reasons 2 5 Releases for other reasons (e.g. court judgments) 3 10 Returns (with special needs if required) 3 10
	EMN NCP Croatia	Yes	1. No. 2. The Law on foreigners clearly prescribed that the health condition of a TCN must be taken into account before return. So far, we have not had a situation where a TCN has stated that adequate medical care will not be available to him in his country of origin. In the mentioned case, an individual assessment would be carried out (authorities in country of origin probably will be contacted) 3. It is up to the TCN to provide all facts about the medical care in country of origin. Facts must be verifiable and on the basis of which a decision can be made. 4. If there was a justified suspicion that a TCN life will be endangered in the country of origin, authorities responsible for return would try to check further by involving the ministry responsible for health and their contact in country of origin.

			5. N/A 6. We did not have any case.
	EMN NCP Cyprus	Yes	1. No. The existing procedure followed concerning the accessibility of a returnee to medical care as well as the comprehensive assessment conducted, in the case of medical condition, incorporate the aspects raised in this particular case law. 2. The Cyprus Police within the overall return procedure places great importance in the respect and the enjoyment of fundamental human rights of returnees, amongst others, the access to medical examination and treatment. As a policy, a risk assessment for every single returnee is conducted aiming to evaluate the returnee's willingness to return, the individual needs, circumstances, and any vulnerabilities e.g. physical and mental conditions. It is noted that a medical examination and evaluation are carried out before a returnee is admitted to the Menogia Detention Centre for irregular migrants in order to assess the state of health and eliminate the risk of any contagious disease. Risk assessment is an on going process which considers all relevant information including medical condition and can be altered at any time during the return procedure. The Aliens and Immigration Unit, where deems it necessary, informs accordingly the Migration Department, about any vulnerabilities that have been identified and the competent Director makes the final decision regarding the implementation of the forced return. If the decision made is to proceed, the vulnerabilities are considered and the return will be conducted by taking appropriate measures (eg. information to the air carrier to provide the necessary facilities or make arrangements for the returnee's comfort, return by police escort and nursing staff, provision of medication during in-flight phase and hand-over, information to relevant authorities at the country of origin via Ministry of Foreign Affairs and Interpol National Bureau, relevant information (e.g. medical condition) to authorities during handing over).

			Noting that, the Cyprus Police follows the Frontex guidelines regarding fitness to travel and medical examination (Article 8 of the Code of Conduct) during return operations. A medical certification fit-to-fly is obtained in cases where appropriate e.g. when a returnee has a known medical condition or medical treatment is required or a returnee requests for medical examination. 3. The burden of proof that medical care is accessible lies with the competent authorities of Cyprus. Each case of returnee is assessed on its own merit and the necessary actions / arrangements are forwarded during the return procedure to assure access to care in Cyprus as well as to to the country of origin. As already mentioned, relevant information about the medical condition of a returnee is provided on time (at the pre- return phase), to the competent authorities of the receiving State. 4. If serious doubt persists and if the receiving state cannot provid further and sufficient assurances, then the Director of the Migration Department (the competent authority) postpones/cancels the return. 5. The Director of the Migration Department (the competent authority) is the one that makes the final decision, after obtaining all the necessary data and assurances. 6. No data available
	EMN NCP Czech Republic	Yes	1. No. 2. All the responsible bodies (Directorate of the Foreign Police Service and other sections of Foreign Police) assess each expulsion individually before a decision on administrative expulsion is issued. The foreigner is always provided with all necessary care and in case that his state demands hospitalization or treatment he/she stays in the territory of the Czech Republic. Following expulsion is based on medical examination. In cases when the foreigner is convinced that his health condition prevents him/her from returning to his/her country of origin or that he will not be provided with

			sufficient medical care there, he/she has the opportunity to apply appeals against the issued decision or apply, for example, for a visa for a stay of more than 90 days for the purpose of special leave to stay, for humanitarian asylum, or for subsidiary protection. The decision is then issued by the Ministry of the Interior. An action for judicial review may be brought against the decision. 3. As part of the administrative procedure, the Police must assess all the circumstances individually and if the foreigner objects an unavailability of medical care in the state to which he/she is to be returned, then the Police must deal with this objection. That means that the Police is obliged, as part of the administrative expulsion proceedings, to find out even these facts. 4. See the reply on Q.2. 5. The Police assesses each case individually. 6. The Police does not record these data.
	EMN NCP Estonia	Yes	1. No. 2. The Police- and Border Guard Board won't expel a person until his or her state of health allows to do it. The medical personnel and the doctor will assess the person's further need for treatment. 3. According to Aliens Act § 19, the burden of proof of reliable facts lies on the third-country national. Nevertheless, the PBGB will, based on information provided by person and information collected by the authority (information is gathered also by the national COI experts), assess all the relevant circumstances before the expulsion of the person. And if there is doubts that person will not receive the medical care on sufficient level in his country of origin, alternative solutions will be searched. 4. There is no such practice.

			5. The PBGB informs the receiving state about the person to be expelled medical situation/need to continue the medical treatment, but in practice the person's access to treatment lies on the receiving state. We may provide to a person only some return support, which may also be used for medical expenses - purchase medicines or receive medical care in the receiving state. At the doctor's discretion it is also possible to provide to a person some medications, usually up to one month. 6. There is very limited number of such cases. We have only had some HIV-positive treatment cases, where we knew that such treatment is also offered in the receiving country.
	EMN NCP Finland	Yes	1. No, it did not directly result in new national regulations. 2. The Finnish Aliens Act section 52 concerning the issuance of residence permits on a discretionary basis on humanitarian grounds states the following: “Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on a discretionary basis on other humanitarian grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.” The government proposal HE 28/2003 states that section 52 may be applied on a third-country national only when the person has already entered the country. This section could become applicable if an asylum seeker has not been granted international protection, but the conditions set down in section 52 are fulfilled. The applicant’s health condition is one of the grounds for issuing a residence permit under section 52 of the Aliens Act. According to the government proposal, a person could be granted with the permit if they are unable to get essential healthcare in the country of origin. The lack of quality or accessibility to the health care services should cause severe damage to the person in the sense that return would

			shorten life expectancy or cause significant physical or mental suffering to the applicant. The fact that access to healthcare in a country is expensive and the third-country national is financially challenged, would not alone be enough to issue a residence permit. In addition, on the individual case level, there should be other factors that make expulsion an excluded option. On a practical level, access to the MedCoi database has made it easier to get medical COI both on the availability and accessibility of medical care. This has had some effects on our assessment and reasoning of cases. 3. The Member State has better resources to get relevant and reliable medical COI. The existence of social and family network is discussed with the applicant during the personal interview. If the applicant claims that there is no network, but the Immigration Service has reasons to doubt that, the burden of proof lies with the Service; the Service does the credibility assessment based on prior statements received during the personal interview and other additional evidence given by the applicant. The Service can also use relevant information from open sources. 4. The Finnish Immigration Service has not in practice contacted the country of origin, but relies on the medical COI available. If there are doubts regarding the availability and/or accessibility of necessary medical care, the case is decided in favour of the applicant on individual grounds. 5. The outcome of the procedure will depend on the combination of the assessment regarding the available medical COI and what other relevant information the applicant has told about his personal life and conditions in the country of origin. 6. When an asylum seeker's application for international protection is rejected, the Finnish Immigration Service will always assess if section 52 should be applied. Other third-country nationals in the Member State need to file a separate application for discretionary basis on humanitarian grounds (section 52). The number for these type of residence permits is low, and they can include other than only health related grounds.

	EMN NCP France	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Germany	Yes	1. No. There was no fundamental change in German asylum law. If medical treatment in the country of destination is possible, but for personal reasons there are no financial resources for the medication or medical treatment including travel and there is no other financial support or exemption from costs, there may be a ban on deportation, according to BVerwG, October 29, 2002, 1 C 1/02. A specific risk can be avoided, for example, by handing over a supply of medication for a few months and at least when it can be expected with sufficient certainty that the necessary further treatment will then be possible in the target country. Specifically, this means that the person seeking protection must provide the necessary treatment and medication by means of up-to-date specialist medical certificates in order to prove the considerable deterioration in the event of a return. But the possibility of medical care can also play a role in the examination of Section 60(5) oft he Residence Act. This is the case when it comes to assessing whether an affected person is able to earn a living in the amount of the subsistence level. If he is restricted in his ability to work for health reasons and he is lacking medical aids, this can mean that – due to his personal circumstances – there is no danger within the meaning of Section 60(7) Residence Act, but the question, whether a target state related ban on removal may arise because he is threatened with treatment contrary to the Convention. 2. The new legal regulations introduced in March 2016 state that it is not necessary for medical care in the receiving state to be equivalent to medical care in Germany and that sufficient medical care generally also exists if it is guaranteed only in a part of the receiving state. The existing procedures and practices on how assessing accessibility of a medical treatment are generally provided in our internal guidance. According to our internal guidance case officers examine the medical reports issued by medical specialists on what medical treatment is required for the third-country national and what will be the real risk to the third-country nationals health status in case of his/her removal. It has, furthermore, to

			be examined if the medical treatment will be accessible and affordable in his/her country of origin. Medical treatment is accessible, if available and effective. Medical treatment is affordable if expenditures due to treatment, medication and call-out charge are covered which can include coverage by family members or in certain cases by the German national welfare system for a "bridging time" of generally two years. 3. The burden of proof for access to medical care (medication and treatment) lies with the Federal Office for Migration and Refugees(BAMF). Information on the availability of necessary medication and treatment requirements is provided by the Central Office for Information Transfer for Return Assistance (ZIRF) and the Medical Country of Origin Information (MedCOI), among other things. Inquiries from decision-makers are received and answered centrally. Regarding the availability of medication / treatments, the region should also be considered. In addition to the available country facts, the personal circumstances of the person concerned must be credibly explained. Depending on the clinical picture and the severity of the impairment, the existence of a social and family network in the country of origin plays a role in the assessment of whether deportation protection is to be granted. The focus here is on what is presented by the person concerned. 4. In principle, the information available is sufficient for decisions to be made about the accessibility of medical care. In individual cases, individual information can be obtained from the Federal Foreign Office or liaison officers 5. If the BAMF comes to the conclusion that there is effective access to medical care, it will reject the asylum application. If the BAMF has received sufficient assurance, it will reject the application for protection against deportation or cancel the existing protection against deportation. If, on the other hand, the BAMF comes to the conclusion that there is no achievable and affordable medical treatment in the host country, it will grant the applicant protection against removal, with the result that the applicant is allowed to stay in the Federal Republic in the form of a limited humanitarian stay

			6. This information is currently not available. The answers are based on administrative practice.
	EMN NCP Hungary	Yes	1. No. 2. The Hungarian legislation on aliens policing was already in line with what was stated in the ECtHR judgment even before the judgment was passed. In its expulsion decision-making procedure, the immigration authority provides clients the opportunity, in the context of a personal interview, to declare their state of health, individual and personal circumstances, and financial and economic situation. If the foreigner reports a serious health problem that requires continuous treatment, the immigration authority acquires information on the country of destination for the expulsion procedure regarding access to health care, and evaluates the information obtained in the expulsion decision. Pursuant to Act II of 2007 on the Admission and Right of Residence of Third-Country Nationals Section 52(1), (hereinafter referred to as ARRTN) the immigration authority shall take into account the principle of non-refoulement in the proceedings relating to the ordering and enforcement of return or expulsion measures. If, for objective reasons (e.g. a nationwide war), the alien does not have access to otherwise available health care in the country of destination for expulsion, (s)he may invoke it in an asylum procedure; however, the immigration authority takes into account the case law of the European Court of Justice on this matter. 3. See answer to question 2. 4. In the planning of the expulsion procedure, the authority decides, according to the possible options, to arrive at the client's previous or usual place of residence or at an airport close to it (this however, largely depends on the location and number of international airports). The body responsible for organizing the deportation will also contact the Hungarian diplomatic mission in the country of

			destination to examine access to health care and to draw up a list of health care providers available to the client. Depending on the willingness of the foreign mission of the country of the expelled person's nationality in Hungary to cooperate, the body responsible for organizing the deportation will also contact the foreign mission and request they provide assistance in organising medical care for the expatriate after the foreign national's return. 5. Pursuant to ARRTN Section 65(8)(b), the deportation of a person shall be abandoned if the deportee's condition requires urgent medical attention. 6. N/A
	EMN NCP Ireland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	EMN NCP Italy	Yes	1. No. However, even before the Paposhvili case law, Italy provides protection to TCNs with serious health problems who illegally entered in Italy. In particular: 1) until 2018, art. 5 para. 6 of law 286/1998 (Consolidated Law on Immigration) granted a residence permit to persons who are not eligible to refugee status or subsidiary protection but cannot be expelled from the country because of «serious reasons of humanitarian nature, or resulting from constitutional or international obligations of the State», among them there were serious and documented health conditions. In this case, the risk of suffering a relevant danger to health – in case of return – were assessed taking into account both the availability and the accessibility of medical care in the country of origin, based on the concrete situation of the migrant.

			2) The law 132/2018 abolished the previous form of protection, but, at the same time, introduced a new case of ban of expulsion for TCNs with particularly serious health problems who run the risk of suffering a severe health damage in case of return. In this case, migrant has to ask directly to the Police Headquarters the issue of a residence permit for medical reasons, submitting the documentation coming from a public health body or by a doctor affiliated to the National Health Service (art. 19 para. 2 lett. d bis of the Consolidated Law on Immigration). However, if the migrant applied for asylum, the Territorial Commission may report to the Questor the existence of the requirements for the issue of a residence permit for medical grounds. So, in case of documented serious health problems, the Police Headquarters - after an assessment regarding the risk of health damage in case of return and the accessibility/availability of medical care in the country of origin - issue a residence permit: – valid for the period indicated in the documentation provided by the public health body or by the doctor affiliated to the National Health Service (however, not longer than 1 year); – renewable as long as the medical conditions are met. 3) Finally, the law 130/2020 confirmed the regulation about the issue of a residence permit for medical reasons in cases of "serious psycho-physical health condition or arising from severe diseases" and provided the possibility to convert it in a residence permit for work reasons. 2. 3. The third-country national shall prove his/her disease providing documentation coming from a public health body or by a doctor affiliated to the National Health Service. Then, the police headquarters have to assess – on the basis of the above-mentioned documentation and in collaboration with the Italian/foreign diplomatic and consular Representation – the concrete accessibility/availability of the health care in the country of origin. Even if the medical treatment is available in the country of origin, Italian authorities may consider the risk of serious health damage in case of return. 4.

			5. See Q. 1 point 2 and Q. 3. In case of negative assessment, the police headquarters deny the issue of the residence permit and the applicant may appeal the negative decision. 6. According to the latest available data, during 2019, 1.682 residence permits for medical reasons has been issued. According to the current legislation, residence permits may be released within 20 days. However, due to the large numbers of applications, the time-limits may be extended. Please note: This type of residence permit must be distinguished from the one – also issued for health grounds – regulated by art. 36 of the Consolidate Law on Immigration. This last regards cases in which migrants regularly ask a visa to enter in Italy for medical treatment, attaching: – declaration compiled by the Italian health facility, indicating the type of care, the duration of the treatment; – certification stating the deposit of a sum (basis on the presumable costs of health treatments requested; – documentation stating the availability of food and accommodation for the entire recovery time.
	EMN NCP Latvia	Yes	1. No. 2. N/a 3. In each individual case evaluation is made based on publicly available country of origin information that was obtained during making the decision. 4. There has not been such case yet.

			5. See answer 4. 6. There are few cases. Mostly persons just claim they have medical problems but do not show documental proof. Assessment is based on publicly available country of origin information that is obtained during making the decision. In one case person claimed that he has severe post-traumatic stress disorder and he also had medical documents proving it. It was established that in country of origin he could have adequate medical treatment and during the trial in a court it was established that person was simulating.
	EMN NCP Lithuania	Yes	1. No, the legislation has not been amended. 2. Before a return decision or expulsion decision is taken, the third-country national shall be interviewed, taking into account all the circumstances of the case. Article 128(2) of the Law of the Republic of Lithuania on the Legal Status of Aliens provides that the enforcement of a decision to expel a TCN from the Republic of Lithuania shall be suspended if the foreigner needs to be provided with essential medical assistance, the necessity of which is confirmed by the Medical Advisory Committee of the health care institution. 3. This is not provided for in the legislation. In practice, there were only a few cases where the issue of healthcare in the country of origin had been raised. As a result, Lithuania has almost no practice on these issues, so it is not possible to make generalisations and provide detailed answers to the questions. Decisions shall be taken on a case-by-case basis with due regard to all the circumstances of the case. 4. Please see Q3. 5. Please see Q3.

			6. N/a.
	EMN NCP Luxembourg	Yes	1. No. 2. No. In Luxembourg the procedure regarding the postponement for removal for medical reasons is established in articles 130 to 132 of the amended law of 29 August 2008 on free movement of persons and immigration (Immigration Law) which was introduced on 1st October 2008. The main reason of this procedure is related to the right of the serious ill person, who requires necessary and adequate medical treatment that cannot effectively be provided in his/her country of origin, even though an order of removal had been issued, to remain in the territory. The serious illness that is taken into consideration is the one that the lack of adequate medical treatment would entail exceptionally serious consequences for them (death, reduction in their life expectancy or provocation of a serious handicap). The third country national must file his/her application for a postponement of removal for medical reasons at the Foreigners Unit[i] of the Directorate of Immigration. The applicant must prove through medical certificates that his/her state of health requires adequate medical treatment without which s/he would face consequences of exceptional gravity. Furthermore, s/he has to produce evidence showing that s/he cannot effectively receive appropriate treatment in the country of return (article 130). The agent of the Directorate of Immigration will review the documentation and request all the information that s/he will consider necessary for the examination of the file. The medical certificates will be sent to the appointed medical physician of the Directorate of Health who has the possibility to examine the patient and render a report on the case. The physician will order all the tests that s/he considers necessary. Furthermore, s/he will have to determine if a medical treatment is required, the consequences of exceptional gravity if the medical treatment is

			not provided and the possibility of receiving appropriate treatment in the country of return (article 131 (3)). Once the medical opinion is received by the Directorate of Immigration, the Minister in charge of Immigration will take a decision. The Minister in charge of Immigration follows the recommendation of the appointed medical physician in all cases. There is no deadline fixed by law, all applications are treated on a case-by-case basis and as soon as possible. Moreover, the amount of time to take a final decision may be extended in cases where the doctor is not in possession of the medical documents of the doctor treating the person and/or additional examinations of the applicant are needed. The refusal by the applicant to undergo medical checks may result in the refusal of the postponement of removal or the residence permit. In the event of a negative opinion by the appointed medical physician, a negative decision on the application for the postponement of removal or the authorisation to stay for medical reasons or refusing an extension to stay for medical reasons will be taken. However, depending on the particular circumstances of the case and after a thorough examination on a case-by-case basis, another authorisation of stay, for example on humanitarian grounds of exceptional gravity, may be granted where it is considered that the person cannot be returned. If the decision is positive, the Directorate of Immigration will grant a postponement of removal (which is not an authorisation of stay) for a maximum duration of six months, and which can be renewed up to a maximum of two years (article 131 (1)). After two years, if the situation remains the same, the third-country national can apply for an authorisation of stay for medical reasons for the duration of the treatment. At this stage of the procedure, the medical certificates will be sent again to the appointed medical physician of the Directorate of Health who will examine the situation of the patient and render a report on the case. Once the medical opinion is received by the Directorate of Immigration, the Minister in charge of Immigration will take a decision based on the recommendation of the appointed medical physician. It is important to stress in this context that the third-country national needs to file an application for this authorisation of stay as no automatic issuance of a residence permit is foreseen by law.

			Once the applicant has received a positive decision on the authorisation of stay for medical reasons, s/he has to apply for the residence permit for private reasons. The maximum duration of this authorisation of stay is up to one year, depending on the individual case and the opinion of the appointed medical physician. This authorisation of stay can be renewed after the re-examination of the situation. These decisions are taken by the Minister in charge of Immigration based on the motivated medical opinion of the appointed medical physician mentioned above. In both cases, for the postponement of removal for medical reasons and the residence permit for private reasons based on medical grounds, the applicant is exempted from the condition to prove sufficient resources. However, if the beneficiary of a residence permit for private reasons is accompanied by family members, the latter must present sufficient resources. [i] Service étrangers - Cellule empêchement à l'éloignement, sursis à l'éloignement, autorisation de séjour pour raisons médicales; titre de de voyage pour étranger, pour apatride. 3. Yes. The burden of the proof lays on the applicants in accordance with article 130 of the Immigration Law. As the First instance Administrative Court, 3rd Chamber in its judgement n° 41031 of 27 March 2019 stated: “It is therefore up to the applicant to show that she is seriously ill, that adequate treatment is not available in her country of origin or that she cannot effectively access it, and that there are serious grounds for believing that in the event of forced removal, - which would be possible in view of the order to leave the territory contained in the decision refusing international protection, which is, in theory, immediately executable thirty days after the decision has become final - she would face a real risk of being exposed to a serious, rapid and irreversible decline in her state of health leading to intense suffering or a significant reduction in her life expectancy.” 4. As the First instance administrative Court stated the burden of the proof lays on the applicant, the courts have also stated that in accordance with the paragraph 187 of the Paposhvilli case "Where [the applicant produces the elements provided for in recital 186 above], it is incumbent on the

			authorities of the sending State, in the context of internal procedures, to dispel any doubts about them. (...) The assessment of the alleged risk must be subject to rigorous scrutiny (...) in which the authorities of the sending State must consider the foreseeable consequences of return on the person concerned in the State of destination, taking into account the general situation in that State and the specific circumstances of the person's case (...). The assessment of risk as defined above [...] therefore implies having regard to general sources such as reports of the World Health Organisation or reports of reputable non-governmental organisations, as well as medical evidence about the sick person", as stated in recital 190, as follows: "The authorities must also consider whether the person concerned is actually able to have access to such care and facilities in the State of destination [...]" (see First instance Administrative Court n° 39541 of 19 April 2018). If after the medical opinion rendered by the Medical Examiner there is still a doubt on the person's effective access to adequate medical treatment the Directorate of Immigration will do a rigorous analysis using general sources such as reports of the World Health Organisation or reports of reputable non-governmental organisations to see the availability and access of the treatment as well as other means to verify these elements. On basis of all these elements the Minister in charge of Immigration take the decision. 5. See answers to Q.2 and Q.4. 6. No information available.
	EMN NCP Netherlands	Yes	1. Yes, in the Netherlands the Dutch national policy was changed in September 2017. 2. Prior to the ECtHR Paposhvili case law, assessing accessibility of a medical treatment had been regarded as beyond the scope of the responsibilities of the Dutch authorities. Expulsion of the third-country national took place if medical treatment was available in the country of origin. With the change, a new step for the third-country national was introduced: If the Medical Advisors Office

			(BMA) of the Immigration and Naturalisation Service (IND) concludes that failure to provide medical treatment would lead to a medical emergency, and indicates that medical treatment is available in the country of origin or permanent residence, the IND submits the medical advice to the third-country national for information and thereby offers the third-country national the opportunity to demonstrate plausibly if medical care would be inaccessible to him. Also the third-country national has to demonstrate his nationality and identity with documents. The IND gives the third-country national a period of two weeks to respond. Extension of this period is possible if the third-country national needs some more time to acquire the necessary information. The third-country national is responsible for delivering evidence of his arguments. The IND assesses the arguments of the third-country national and then decides if these arguments are plausible. If not, the applicant can be returned. If it is deemed plausible that the applicant does not have access to medical care, the case will be handed over to the Repatriation and Departure Service, who will attempt to arrange the access to medical care. 3. In the Netherlands it is up to the third-country national to make clear with evidence that the medical care would be inaccessible to him. 4. In the Netherlands first the third-country national may state that the medical care is not accessible to him. If the IND thinks that his arguments are plausible, the IND can ask the Repatriation and Departure Service (DT&V) to investigate the case and may make appointments or arrangements with medical care institutions in the receiving state, such as a hospital or a doctor to ensure that the third-country national will have access to treatment (immediately after his return). It is the objective of the DT&V to provide all the requirements for the applicant to gain access. By entering the DT&V in the procedure, the Netherlands as the returning State can now obtain individual and sufficient assurances from the receiving State, as a precondition for removal, that appropriate treatment will be available and accessible to the persons concerned so that they do not find themselves in a situation contrary to Article 3 ECHR. 5. If the DT&V has indicated that it has succeeded in realizing effective access to medical care, the IND will take a final decision on the third-country nationals request for legal stay. Since the DT&V have realized sufficient assurance from the receiving State, the IND will not grant (or will terminate)

			postponement of departure. (An appeal against the IND's decision and a request for a provisional order is possible, but the request for a provisional order must be submitted within 24 hours of the announcement of the decision to have suspensive effect.) If the DT&V has indicated that it has not succeeded in actually gaining access to medical care, despite the willingness of the third-country national to cooperate with the DT&V in enabling his departure, the third-country national is eligible for (further) postponement of departure. He will not be repatriated. This does not constitute a residence permit. However, it is considered a temporary humanitarian legal stay. 6. This information is not currently available for the Netherlands and will be added to the reply as soon as possible.
	EMN NCP Poland	Yes	1. No. 2. Pursuant to Art. 348 points 1 lit. and the Act on foreigners, a foreigner is granted permission to stay on the territory of the Republic of Poland for humanitarian reasons, if he is obliged to return only to a country where, within the meaning of the Convention for the Protection of Human Rights and Fundamental Freedoms, his right to life would be threatened, personal freedom and security. This means that the serious health condition of the foreigner may not only be an obstacle in organizing the return of the foreigner, but also in issuing the decision on the obligation to return, as it constitutes the basis for issuing a decision on granting the foreigner protection for humanitarian reasons. In practice, the Border Guard authorities, through their coordinators for protection against expulsion, request the Country of Origin Information Department of the Office for Foreigners to perform appropriate checks via the MedCOI platform. The checks consist in verifying whether there are treatment options for a given disease in the foreigner's country of origin, and whether the given foreigner has potential access to a given treatment in practice.

			3. It is the duty of the Border Guard authority to prove in the course of the proceedings whether such possibilities exist or whether it is necessary to grant a residence permit for humanitarian reasons. Of course, the foreigner has the right to attach his / her evidence to the procedure. 4. There is no experience in this matter (occasional cases where such an assessment was made). 5. There is no experience in this matter (occasional cases where such an assessment was made). 6. Occasional cases (one or two cases in a year).
	EMN NCP Portugal	Yes	1. No. 2. TCNs that manifest health problems are taken to the hospital. If the health problem involves hospitalization or continued medical treatment, as a rule, the TCN brings the issue to the SEF in the sense of not being removed, gathering evidence of the situation invoked. National or regional health authorities may validate evidence. 3. The access to medical care in return procedures is provided by the national healthcare system. In detention centers, the medical care is also provided by NGOs focused on health care (e.g. Médicos do Mundo) 4. Usually, PT does not remove a returnee if his health is not ensured in the receiving state. Immigration and Borders Service asks for national or regional health authorities services (www.dgs.pt). 5. Not applicable. 6. Information not available.

	EMN NCP Slovakia	Yes	1. No. 2. N/A 3. Third-country nationals have access to the public health insurance which is the same for all persons, under the same conditions, regardless of their status. At the same time, complementary healthcare through ongoing projects (by NGOs) in the Detention Center is available. Each detained person shall undergo a medical examination before their return is carried out. In practice, the enforcement of expulsion is not carried out, if the person is medically unable to return. 4. N/A 5. N/A 6. N/A
	EMN NCP Slovenia	Yes	1. No. 2. Return/removal procedures, which involve people who need advanced medical treatment after their arrival to their home country, require extra attention. Regardless of the type of return (voluntary or forced) the return authority in Slovenia (Police), in serious medical cases, establishes contact with the consular authority of receiving state. Furthermore, Police submits a request for support, which includes arrangements regarding appropriate reception of the returnee by a competent medical or psychological authority in the receiving state. The return operation will not be carried out until an appropriate reception in the receiving state is arranged. 3. We do not have exact answer on the given question.

			4. Slovenian Police has in all return operations involving serious medical cases, prior to return, arranged a reception of the returnee by a competent institution immediately after arrival. The arrangements have been made in cooperation with the consular authority. 5. In case of a negative outcome, the return procedure would not be carried out be. Instead, a temporary stay would be granted. 6. Slovenian Police handles around one case annually.
	EMN NCP Spain	Yes	1. No 2. Residence permits for humanitarian reasons can be granted when medical reasons do not allow returning home. This can be the case for third country nationals staying illegally or risking overstay. 3. The burden of proof lies upon the third-country national, except in cases where those medical reasons make the return operation itself impossible, or not recommendable (person not fit to travel). 4. This would normally happen at a judicial stage, either because the third-country national has appealed against removal being carried out, or because an appeal has been lodged against a negative decision on a residence permit for humanitarian reasons. Judges have freedom to consider the weight of proof presented by all sides. 5. See above 6. n/a

	EMN NCP Sweden	Yes	1. No 2. Chapter 12 section 18 in the Swedish Aliens Act states that If, in a case concerning the enforcement of a refusal-of-entry or expulsion order that has become final and non-appealable, new circumstances come to light that mean that there are medical or other special grounds why the order should not be enforced, the Swedish Migration Agency may grant a permanent residence permit if the impediment is of a lasting nature. If there is only a temporary impediment to enforcement, the Agency may grant a temporary residence permit. The Swedish Migration Agency may also order a stay of enforcement. In a ruling of the Swedish Migration Court of Appeal on 21 September 2017, case no. UM 8982-17, the Swedish Migration Agency had in a case of impediment to enforcement investigated which medical care was available in the country of origin. The Migration Court of Appeal stated that investigation was too limited in relation to the very complex circumstances in the case, and the documentation incomplete. 3. It is for the applicant to provide evidence that there is a risk of treatment in breach of Article 3. However, the applicant may not be required to present full evidence. The authority's obligation to investigate then takes effect. When the applicant invokes evidence that indicates that he or she is in danger of being treated in the event of a return in violation of Article 3, it is the responsibility of the authorities to dispel any doubts regarding the evidence and, if necessary, supplement with additional evidence. The evidence required is not sufficient if it only concerns the lack of medical infrastructure or the level of care. The decisive factor is instead whether the receiving state generally has adequate and accessible care to prevent the applicant from a serious, rapid and irreversible decline in health, resulting in intense suffering or a significant shortening of life expectancy 4. No. Not applicable 5. We do not use this procedure to obtain individual and sufficient assurances of access to medical care.

			6. No information available. We do not have that type of statistics.

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