



Ad-Hoc Query on “fit-to-fly” declarations

Requested by LT EMN NCP on 3th July 2015

Reply requested by 3rd August 2015

Responses requested from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom, plus Norway (29 in Total)

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1. Background Information

The Ministry of the Interior of the Republic of Lithuania is considering to change its current regulation on removal and introduce the requirement of medical examination prior to removal by air for all returnees. This could be proved by issuing a “fit-to-fly” declaration. Therefore, the Ministry is interested in other States have such a requirement

Therefore, we would kindly request to answer the following questions:


1. Do your legal acts establish the direct requirement of medical examination prior to removal by air on all returnees? If it is foreseen only for specific categories of returnees, please specify these categories.
2. If the answer to the 1st question is “Yes“, please clarify:

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- a) which legal act regulates the above mentioned requirement? If available in English, please provide a link.
- b) what qualification the medical personnel should have in order to issue „fit-to-fly“ declaration (GP, physician’s assistance, nurse)?
- c) does foreigner receive a copy of a „fit-to-fly“ declaration?
- d) if a foreigner refuses to do the medical examination, does this have any consequences? Can (s)he be removed without a “fit-to-fly” declaration?
- f) do foreigners “pretend” to be sick and/or unfit to fly in order to avoid removal often? In practice, how do you deal with such situations?

We would very much appreciate your responses by **03 August 2015**.





2. Responses¹

		Wider Dissemination?²	1. Do your legal acts establish the direct requirement of medical examination prior to removal by air on all returnees? If it is foreseen only for specific categories of returnees, please specify these categories. 2. If the answer to the 1 st question is “Yes“, please clarify: <ul style="list-style-type: none"> a) which legal act regulates the above mentioned requirement? b) what qualification the medical personnel should have in order to perform such medical examination and issue „fit-to-fly“ declaration? c) does foreigner receive a copy of a „fit-to-fly“ declaration? d) if a foreigner refuses to do the medical examination, does this have any consequences? Can (s)he be removed without a “fit-to-fly” declaration? f) do foreigners “pretend” to be sick and/or unfit to fly in order to avoid removal often? In practice, how do you deal with such situations?
	Austria	Yes	1. Yes. A medical examination is foreseen for each returnee prior to removal by air. 2. a) In Austria the requirement of medical examination prior to removal by air is defined by Art. 5 para 1 of the Directive of the Federal






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."






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			<p>Ministry of the Interior on the organisation and implementation of removals by air (sheduled flights). The Directive is only available in German.</p> <p>b) The medical examination has to be implemented by a public medical officer (physician).</p> <p>c) No, the foreigner does not receive a copy.</p> <p>d) Yes, a foreigner who refuses to do the medical examination can be removed by air anyway, provided that there is no obvious reason to believe that the foreigner is unfit to fly.</p> <p>e) It depends on the circumstances. Sometimes the flight will be cancelled or an additional medical check will be done.</p> <p>Source: Federal Ministry of the Interior</p>
	Belgium	Yes	
	Bulgaria	Yes	
	Cyprus	Yes	
	Czech Republic	Yes	<p>1. Do your legal acts establish the direct requirement of medical examination prior to removal by air on all returnees? If it is foreseen only for specific categories of returnees, please specify these categories.</p> <p>The obligation to undergo a medical examination is laid out in the paragraph 136 of the Act No 326/1999 Coll., on Residence of Foreign Nationals in the Czech Republic. The result of such examination is not specifically the “fit-to-fly” declaration. However, it is an obligatory “final/output” examination (i.e. at the time of the termination of detention which has to occur before the implementation of expulsion). In case a foreigner is in bad health conditions which do not allow a foreigner to be expelled, the expulsion is not carried out.</p> <p>2. If the answer to the 1st question is “Yes“, please clarify:</p> <p>a) Which legal act regulates the above mentioned requirement? If available in English, please provide a link. Paragraph 136 of the Act No 326/199 Coll., on Residence of Foreign Nationals in the Czech Republic. The Act is available on: http://www.czechlegislation.com/en/326-1999-sb.</p> <p>b) What qualification the medical personnel should have in order to issue „fit-to-fly“ declaration (GP, physician’s assistance, nurse)? A medical examination is carried out by a GP in the facility, alternatively by a physician of the contractual medical centre.</p> <p>c) Does a foreigner receive a copy of a „fit-to-fly“ declaration? No, the copy is meant for the Police who do carry out an expulsion.</p> <p>d) If a foreigner refuses to do the medical examination, does this have any consequences? Can (s)he be removed without</p>





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			<p>a “fit-to-fly” declaration? Generally, the medical examination is carried out without a presence of a third person. Only in case a foreigner in question offers resistance, the Police are authorized to overcome this resistance. If a medical examination is not successfully carried out even after that and if a foreigner does not have any evident health difficulties, <u>the expulsion is possible</u>. However, such case has not happened in practice in recent years.</p> <p>e) Do foreigners “pretend” to be sick and/or unfit to fly in order to avoid removal often? In practice, how do you deal with such situations? Yes, such cases occur in practice. Also, cases of self-mutilation occur already during the implementation of expulsion. In such cases the implementation of expulsion is suspended until actual health conditions of a foreigner in question are found out, or rather the expulsion is implemented in a way which prevents a foreigner in question from obstructing the realization of expulsion by self-mutilation.</p>
	Denmark	Yes	
	Estonia	Yes	<ol style="list-style-type: none"> 1. Not in case of direct flights. If it is impossible to use for removal a direct flight, the transit through the airport open for international flights of a Member State of the EU (transit flights) will be organized. So, in this case, yes. 2. For transit flights we have declaration - so called <i>Transit request for the purposes of removal by air</i>, which contains questions about person medical needs and etc., please find it here (both in Estonian and English). <ol style="list-style-type: none"> a) Request is regulated by regulation of the Minister of Internal No 65. b) Information concerning person medical condition will be collected from GP working in detention centre. c) No d) by case basis <p>Yes, some persons pretend to be sick. Solutions are coming by case basis.</p>
	Finland	Yes	<ol style="list-style-type: none"> 1. In Finland there is no requirement to conduct a medical examination to all returnees who are being removed by air. Medical check is conducted to those, who have a medical condition which could potentially prevent travelling by air. There is no list of specific categories of returnees to whom this would apply: individual circumstances of returnees are taken into account and the need for a medical check is decided on case-by-case basis. In this case, the doctor makes a decision concerning the state of health of the returnee. Medicines shall not be used in order to secure the escort; the decision to give medication must always be based on treating a medical condition which requires medication. The returnee’s state of health might also require that a doctor or a nurse participates in the escort of the returnee. 2. N/A
	France	Yes	NO, France does not require a medical examination prior to removal for returnees.
	Germany	Yes	<ol style="list-style-type: none"> 1. No, there is no legal requirement of medical examination prior to removal by air for all returnees. Fit-to-fly-examinations will only be conducted, if there are indications that health restrictions or risks could impair the removal’s success. This is not established by

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			<p>legal acts, but by administrative provisions of the Federal Police or by guidelines set out by the airlines (e.g. concerning pregnant women), which the responsible Foreigners Authority has to abide by.</p> <p>2. -</p>
	Greece	Yes	No there are no legal acts which establish the direct requirement of medical examination prior to removal by air on all returnees. In practice, when we are informed from the detention centre that a returnee needs medical examination and / or medical treatment, then we examine him and receive a prescription from a doctor that he is able to fly.
	Hungary	Yes	<p>1. No, not provided. In Hungary, the medical examination takes place during the alien policing procedure.</p> <p>2. -</p>
	Ireland	Yes	<i>There is no legal requirement for a medical examination prior to removal by air on all returnees. However if someone has a medical condition that is made known (or is already known) to the authorities they are examined by a doctor to establish if they are fit to fly.</i>
	Italy	Yes	<p>1. In case of removal by air, Italian regulation does not provide for medical examinations aimed at verifying whether the TCN to be removed is fit to fly.</p> <p>However, it's important to point out that the <i>Consolidated Act on Immigration</i>, Article 35(3), provides for <i>urgent and essential, outpatient and hospital treatments</i> to all TCNs who are on national territory (and therefore to irregular TCNs to be removed as well). For the purposes of international prophylaxis, these treatments include, but are not limited to, the diagnosis and treatment of infectious diseases, and the eradication of any outbreaks. In all these cases, removal and deportation operations are suspended, and therefore delayed.</p> <p>2. -</p>
	Latvia	Yes	<p>1. Do your legal acts establish the direct requirement of medical examination prior to removal by air on all returnees? If it is foreseen only for specific categories of returnees, please specify these categories.</p> <p>In accordance with the Cabinet of Ministers "<i>Regulations Regarding Forced Removal of Third-country Nationals, Departure Document and the Issue Thereof</i>" adopted on 21 June 2011 Article 22: <i>Prior to the implementation of removal the medical examination (checkup) of the third-country national shall be performed in order to determine whether his or her state of health permits travelling</i>".</p> <p>The Regulations does not define any special categories of third-country nationals. The Regulations does not foresee the issuance of the special document on the state of health of a foreigner, who is to be removed. In practice such document is issued by the medical practitioner working in the Detained foreigners accommodation centre "Daugavpils" or by the doctor – specialist if the foreigner has any health problems or has had medical treatment in the hospital.</p> <p>2. If the answer to the 1st question is "Yes", please clarify:</p> <p>a) which legal act regulates the above mentioned requirement?</p> <p>Cabinet of Ministers "<i>Regulations Regarding Forced Removal of Third-country Nationals, Departure Document and the Issue Thereof</i>" adopted on 21 June 2011 (link: http://likumi.lv/ta/id/232351-noteikumi-par-arzemnieka-piespiedu-izraidisanu-izcelosanas-dokumentu-un-ta-izsniegšanu)</p> <p>b) what qualification the medical personnel should have in order to perform such medical examination and issue „fit-to-fly“ declaration?</p> <p>The medical practitioner working in the Detained foreigners accommodation centre "Daugavpils" is a medical assistant.</p>

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			<p>c) does foreigner receive a copy of a „fit-to-fly“ declaration?</p> <p>NO.</p> <p>d) if a foreigner refuses to do the medical examination, does this have any consequences? Can (s)he be removed without a “fit-to-fly” declaration?</p> <p>There is no consequences if a foreigner refuses to do the medical examination. There is a medical history on the state of health of the foreigner formed by the medical assistant in the detention center during the stay of detained foreigner in the center starting from the day of accommodation in the center until his/her release. As regards for not detained foreigners, who refuse to do medical examination and have not been examined during their stay in Latvia, they are removed without a document on their state of health.</p> <p>e) do foreigners “pretend” to be sick and/or unfit to fly in order to avoid removal often? In practice, how do you deal with such situations?</p> <p>If a foreigner states or pretends to be sick the medical examination needs to be done by a doctor-specialist before the removal. In this case after the medical examination a document is issued by the doctor. In case if the foreigner does not fit to fly upon the doctor conclusion, the removal procedure will be stopped and the foreigner if necessary will get the appropriate state provided medical treatment.</p>
	Lithuania	Yes	<p>1. No, not provided. In practice, medical examination could be performed prior to removal of returnee who either has a known medical condition or where serious medical treatment is required.</p> <p>2. –</p>
	Luxembourg	Yes	<p>1. Yes.</p> <p>2.</p> <p>a. Article 3 of the modified Grand-ducal regulation of 26 September 2008 establishing the rules of professional conduct to be applied to agents in charge of executing a return decision³ establishes that the return decision cannot be executed if the third-country national is not medically fit to travel. This implies that the individual must be submitted to a medical examination prior to removal.</p> <p>b. A physician (medical doctor) has to perform the medical examination.</p> <p>c. The article does not require that a copy of the medical examination is provided to the returnee.</p> <p>d. If the returnee refuses the medical examination the return can nevertheless be executed.</p> <p>Yes. In some cases persons have pretended to be sick or unfit to travel. As article 3 requires a medical examination prior to return the individual must be examined by a physician.</p>
	Malta	Yes	
	Netherlands	Yes	<p>1. Do your legal acts establish the direct requirement of medical examination prior to removal by air on all returnees?</p> <p>No, not required on all returnees. In practice, medical examination could be performed prior to removal of returnees if there are medical indications that could affect the departure or the flight. This takes place with returnees who either have known medical conditions, or</p>

³ See Mémorial A-180 of 22 August 2011.

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			when the doctor from the medical service judges that a fit to fly is necessary. 2. -
	Poland	Yes	<p>1. Yes, Polish legal acts establish the obligation of medical examination prior to removal by air (or land) for all returnees. In the legal provisions there is no categorization of returnees who are obliged to undergo a requested examination.</p> <p>2a) The above mentioned requirement is regulated in § 25 of Appendix to the Regulation of the Minister of Internal Affairs dated on 24th April 2015 on guarded centres and arrests for foreigners. [Załącznik do <i>Rozporządzenia Ministra Spraw Wewnętrznych z dnia 24.04.2015 r. w sprawie strzeżonych ośrodków i aresztów dla cudzoziemców</i>].</p> <p>2b) The person authorised to perform such medical examination is obliged to possess a physician title regardless of what medicine branch she/he has been specialized in.</p> <p>2c) Foreigner does not receive a copy of the certificate stated a lack of contraindications for travel by air [zaświadczenie o braku przeciwwskazań do podróży drogą lotniczą]”fit – to – fly”. Document is included to the foreigner’s dossier or is handed over to the Border Guard commandant responsible for removals.</p> <p>2d) Foreigner during his apprehension and foreigner staying in the guarded centre for foreigners is obliged to undergo through a medical examination foreseen by legal provisions. In case of his refusal, a physician states this fact in the medical documentation. There is no possibility to issuance of any certificate and – in consequence – to execute a foreigner’s removal without medical examination. In reality, there were no cases of refusals recorded recently.</p> <p>2e) In case of any doubts or suspicions that foreigner tries to mislead the Border Guards on his factual health condition, medical examination might be performed by the relevant specialist in the nearest public hospital.</p>
	Portugal	Yes	No, not provided. A medical examination prior to removal of returnee is made when there’s a prior knowledge of some medical condition or when a serious medical treatment is required.
	Romania	Yes	
	Slovak Republic	Yes	<p>No. The Slovak national legislation does not establish the direct requirement of medical examination prior to removal by air. However the Slovak national legislation states the necessity of medical examination in regard to removals under Council Decision 2004/573/EC of 29 April 2004.</p> <p>In praxis each third country national who is in the police detention facility has to undergo medical examination. During the exit medical examination the doctor confirms by writing that the person is able to be removed by air. The police escort which is accompanying the third country national has this medical confirmation form at its disposal.</p>
	Slovenia	Yes	No such provisions exist.
	Spain	Yes	Spanish legal acts don’t establish the direct requirement of medical examination prior to removal by air for all returnees. A medical examination must be undergone when a third country national is placed in a detention centre. A medical team is always present on charter return flights, and at the departure point of commercial flights, in case they are needed. In practice, a fit-to-fly declaration is always asked for when the returnee is known to have some illness. Those returnees who claim being ill are taken to the medical services in order to verify their allegations (e.g. taking a radiography in case they pretend having swallowed a battery). In case doubts persist, the person is not removed.

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	Sweden	Yes	<ol style="list-style-type: none"> 1. No. However, even if there is no such formal requirement in Swedish immigration law, the health condition of returnees is taken into account when authorities assess whether or not a return can/should be carried out. 2. Not applicable.
	United Kingdom	Yes	<ol style="list-style-type: none"> 1) While there is a requirement for individuals to be medically screened on entering detention, there is no mandatory requirement for them to be screened prior to removal. Medical examination of a detainee prior to removal would generally only take place where having a medical condition is put forward as a reason for delaying/cancelling removal.
	Croatia	Yes	NO, Croatia does not require a medical examination prior to removal for returnees.
	Norway	Yes	<ol style="list-style-type: none"> 1. The Norwegian Immigration Act does not establish a direct requirement of medical examination prior to removal by air. No other national legislation regulates this issue either. However, internal guidelines at the National Police Immigration Service (the agency responsible for removals) require a risk assessment for all removals. The mental and physical health of the prospective deportee is considered during the course of such an assessment, and a fit-to-fly assessment will be carried out if there is uncertainty about the fitness of the individual. 2. N/A.
