



Ad-Hoc Query on Assessment of Medical Statements

Requested by FI EMN NCP on 16th December 2010

Compilation produced on 1st of March 2011

Responses from Austria, Belgium, Bulgaria, 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 (13 in Total)



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1. Background Information

The Finnish Immigration Service is exploring good practices in order to make the assessment of medical statements concerning the state of health of a residence permit or asylum applicant easier and also to find means to improve the quality of the medical statements concerning residence permit or asylum applicants. One issue which has been considered in this occasion is the possibility to utilise the assistance of a particular medical examiner (doctor) in the decision-making process.

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2. Responses¹

		Wider Dissemination? ²	<p>1) Is there a possibility to use assistance of a particular medical examiner (or a doctor) chosen by the decision maker (i.e. other than the attending doctor of the applicant) in the decision-making of residence permit or asylum issues in your country?</p> <p>2) If there is a certain medical examiner available for the decision maker in your country, how is his/hers expertise used in the decision making process: in what kind of issues is the expertise used and how is the medical examiner involved in the application process (for example is it possible for a particular doctor to conduct a medical examination for the applicant or is a medical expert used for getting objective information on medical issues)?</p> <p>3) If there is such a medical examiner or a doctor available for the decision maker in your country, what kind of experiences (advantages/disadvantages) do you have on this practise?</p> <p>4) What kind of other means are there available for the decision maker in order to become convinced that the information received concerning the state of health of the applicant is neutral and objective by nature and to make sure different applicants are treated in an equal way?</p>
	Austria	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Belgium	Yes	<p>1) Is there a possibility to use assistance of a particular medical examiner (or a doctor) chosen by the decision maker (i.e. other than the attending doctor of the applicant) in the decision-making of residence permit or asylum issues in your country?</p> <p>Yes.</p> <p>2) If there is a certain medical examiner available for the decision maker in your country, how is his/hers expertise used in the decision making process: in what kind of issues is the expertise used and how is the medical examiner involved in the application process (for example is it possible for a particular doctor to conduct a medical examination for the applicant or is a medical expert used for getting objective information on medical issues)?</p> <p>At the Medical Section of the Directorate for Humanitarian Applications (Alien's Office Belgium) we process the applications for residence in Belgium on medical grounds, in collaboration with medical advisors (physicians) who advise on the medical issue (the medical condition of the applicant and the availability of medical care in CO).</p>




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>These medical advisors can 1/ give their advise directly to the decision maker , 2/ they can judge that they need additional information from the attending physician, 3/they can estimate that a specific medical examination is necessary, or 4/ they can appeal to a private medical expert for additional advise.</p> <p>3) If there is such a medical examiner or a doctor available for the decision maker in your country, what kind of experiences (advantages/disadvantages) do you have on this practise?</p> <p>The main advantage of the availability of a pool of medical advisors is the use of the right experience on the right level of decision-making: medical experience as far as the health situation is concerned and immigration law /public security experience as far as presence of the applicant on the national territory is concerned</p> <p>4) What kind of other means are there available for the decision maker in order to become convinced that the information received concerning the state of health of the applicant is neutral and objective by nature and to make sure different applicants are treated in an equal way?</p> <p>The decision maker is not involved in the appreciation of the strictly medical issue and relies on the medical advisor's expertise and the sources and databases he consults.</p>
	Bulgaria	Yes	
	Cyprus	Yes	
	Czech Republic	Yes	
	Denmark	Yes	
	Estonia	Yes	<p>1. Yes, it is possible to use a medical examiner in the course of processing asylum applications. The reception centre has an agreement with a general physician's office, which provides the necessary service when needed. In case there is a need for a specialized doctor, the general physician's office issues a referral accordingly. No medical staff is involved in the processing of residence permit applications or other procedures.</p> <p>2. The medical examiner is appointed with a help of an expert from the Estonian Forensic Science Institute (EFSI) under the Ministry of Justice. In case there is a need for an age determination procedure or a DNA test, the decision-making authority contacts the EFSI, receives the necessary information concerning particular doctors to be contacted and procedures to be performed. An expert is also present during the procedure to make sure that it is successful. In case an applicant needs a general medical examination, he is brought to the general physician's office, in case of an emergency a doctor is called to the reception centre.</p> <p>3. In 2010 an age assessment procedure has been performed in regards of two asylum applicants. The results were highly valued for the</p>



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			<p>decision-making process.</p> <p>4. Since the medical examination is performed by the general physician's office (the doctors are not employed by the reception centre or the Police and Border Guard Board of Estonia) and expertise acts are composed by experts from the forensic science institute it is believed that the received information is unbiased, correct, neutral and objective.</p>
	Finland	Yes	<p>1. As a general rule it is the applicant's responsibility to deliver clarifications concerning his/her state of health in case he/she has appealed to his/her state of health as a ground for issuing the residence permit.</p> <p>It is possible for the Finnish Immigration Service to provide the applicant or the sponsor with an opportunity to prove their biological kinship with DNA analysis if no other adequate evidence of family ties based on biological kinship is available and if it is possible to obtain material evidence of the family ties through DNA analysis. (Sections 65 and 66 of the Aliens Act)</p> <p>Since the 1st of August 2010 it has also been possible for the decision maker to request an examination of forensic medicine in order to determine the age of the applicant or the sponsor. (Sections 6 a and 6 b of the Aliens Act)</p> <p>2. Both the DNA analysis and the age determination are carried out at the Department of Forensic Medicine ("Hjelt Institute") at the University of Helsinki.</p> <p>3. The DNA analysis and the age determination procedure are important means for establishing the biological kinship of the parties involved or the age of the applicant or the sponsor in case there are no official documents from which these issues can be ascertained.</p> <p>4. If the clarifications the applicant has delivered concerning his/her state of health seem not to be objective or matter-of-fact, it is possible for the decision maker to request the applicant to complement the application by delivering further clarification concerning his/her state of health. If there are reasons to consider the medical certificate (or statement) for being partial or otherwise inapt, it is also possible to ask for a statement of the National Supervisory Authority for Welfare and Health (Valvira). (Valvira can examine the actions of the attending doctor in the case.)</p>
	France	Yes	
	Germany	Yes	<p>1) Procedure at the Federal Office for Migration and Refugees: the decision maker in the asylum process and or in the process to determine subsidiary protection at the Federal Office has the option of calling in medical officers and specialists as well as non-medical experts in the area of psychology to support him/her in the final decision.</p> <p>Decisions on issuing a residence title without a prior asylum process as well as (waiving) termination of residence fall within the jurisdiction of the German Federal States. During these procedures, the Aliens Authority responsible may obtain a report by a medical officer from the local public health department and/or by a specially commissioned physician/medical specialist.</p> <p>Outside of Germany, a medical examiner may be commissioned by the responsible German Representation abroad as part of the visa application process.</p>




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			<p>2) Procedure at Federal Office: Expert medical/psychological reports are introduced into the process during fact finding and taken into consideration for the final decision. Additional reports are commissioned by the Federal Office (decision maker) in the event that the existing/available expert medical/psychological reports are insufficient for the decision-making. Commissioned expert reports generally include an examination of the applicant.</p> <p>Procedure in the German Federal States: By order of the Aliens Authority or the German Representation abroad, the applicant may be examined by a medical officer or commissioned physician, specialist or medical examiner (with regard to applicant's fitness to travel), or a medical report presented by the applicant himself/herself may be evaluated. The medical opinion is used by the Aliens Authority or German Mission abroad as the basis for a decision on residency.</p> <p>3) Procedure at the Federal Office: Expert medical/psychological reports and, as experience has shown, evaluations must be analysed from a legal point of view. Experts on psychological illnesses who are also competent from an intercultural point of view often get involved with asylum applicants due to their own social commitment. This must be taken into consideration when evaluating the objectivity of their reports. This phenomenon is not as prevalent among experts on medical physical conditions.</p> <p>Procedure in the German Federal States: The physicians are commissioned for each individual case by the local Aliens Authority or the German Representation abroad; the Federal Office for Migration and Refugees has no central experience with their activities.</p> <p>4) Procedure at the Federal Office: Aside from the reports, there is no further means of obtaining neutral information as to the overall health of the applicant. The evaluation of the health-related risks of a return to the country of origin is always performed on a case by case basis and dependent upon tangible individual submission. The final decision thus relies on many factors (e.g. the decision maker, statement of facts, country information) that its uniformity cannot be guaranteed.</p> <p>Procedure in the Federal States: If a foreign national claims that a health (or other) risk awaits in the intended destination of his/her imminent deportation, yet does not apply for asylum, the Aliens Authority is obliged to obtain a report from the Federal Office for Migration and Refugees in order to allow its special legal and other expertise to aid in making the final decision (§ 72 Paragraph 2 German Residence Act).</p>
	Greece	Yes	
	Hungary	Yes	
	Ireland	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Italy	Yes	<p>In Italy the National Health System is universalistic. In addition to provide the assistance for all TCNs residents, it allows them to choose a doctor (or a pediatrician for children), so for general practice the medical care is expressed through a trust relationship.</p> <p>For asylum applicants, still pending the audition by the relevant Commission, a protection system called SPRAR operates in Italy and is able to manage almost all potential users (SPRAR provides from house reception to all basic services). During SPRAR reception, even before the decision, NHS doctors examine the health status of asylum applicants and even trauma that can be derived from the previous</p>





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			<p>factors (torture, etc.).</p> <p>Furthermore, within the NGOs (Jesuit Refugee Service, Caritas, NAGA, etc.) professional health services are managed and they enjoy a very strong confidence by migrants and asylum applicants</p>
	Latvia	Yes	<p>1. No, there is no such possibility available.</p> <p>If there is necessity to approve some aspects of asylum seeker statements in the context of the asylum claim, for example, relating to the previous torture, inhuman or degrading attitude, the particular examination can be required. It is a choice of the decision maker to ask for the doctor/specialist assessment.</p> <p>2. N/a</p> <p>3. N/a</p> <p>4. If there is doubt that a medical certificate submitted by an applicant, is forged or false, or untrue, Office of Citizenship and Migration Affairs forwards this document to special unit within Ministry of Health who carries out examination of this certificate. There are numerous examples where the certificate has been recognized as invalid.</p> <p>Relating to asylum cases – taking into account that the assessment relating to the previous torture, inhuman or degrading attitude is done by the doctor/specialist because of the request of decision maker we have not met the situation where the information received has raised any doubts.</p>
	Lithuania	Yes	<p>The health state of a third country national can only influence the decision on whether it is possible to return the person to his or her country of origin. If the health state doesn't allow to return the third country national (either a rejected asylum seeker or any other illegally staying third country national), s/he must remain in Lithuania. If s/he cannot be returned in a year, s/he obtains a temporary residence permit. In order to assess the health condition of a person, it is possible to use assistance of a doctor.</p> <p>When considering an application for asylum, if doubts arise over the health state of an asylum seeker, he is referred to doctors, who will carry out tests and draw a conclusion and specify the necessary medical treatment. In this case, when examining the asylum application, account is taken of whether the country of origin of the asylum seeker will be able to ensure for the person an appropriate medical treatment and whether this may result in a threat posed to his life. The asylum seeker may himself refer to doctors and present the required documents to a person examining his file.</p> <p>The Lithuanian Foreigners' Registration Centre employs a general practitioner, who examines and provides first aid. If the help of a specialized doctor is necessary, an asylum seeker is sent to specialized medical establishments, where he is provided with professional help and undergoes the necessary tests.</p> <p>Lithuania has no other measures permitting to ascertain the reliability of the doctor's conclusion. In the event of doubts over the conclusion, there is always a possibility to repeat a test with another specialized doctor and consult a general practitioner at the Foreigners' Registration Centre.</p>






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	Luxembourg	Yes	
	Malta	Yes	
	Netherlands	Yes	<p>1) Yes. The decision maker with the Immigration and Naturalisation Service (IND) can consult an external medical advisor, working for a subcontracted partner (Medifirst) in order to determine whether or not it is medically possible to interview an asylum applicant. Apart from that, the decision maker can consult a medical advisor of the IND's the Medical Advisors' Office (BMA) and ask for a medical advice with a standardized questionnaire in order to determine whether for medical reasons return to the country of origin would constitute a violation of article 3 of the European Convention on Human Rights (ECHR). The medical advisor is not asked any questions on the grounds for applying for asylum itself.</p> <p>If an alien has applied for a non-asylum residence permit with medical aspects or in case of medical aspects in the return procedure (can the alien travel given his health?), the decision maker can also consult a medical advisor of the IND's the Medical Advisors' Office (BMA) and ask for a medical advice with a standardized questionnaire like with the art 3 ECHR procedure.</p> <p>2) The Medical Advisors' Office only gives advice when asked by the IND decision maker. Medical advice can only be sought if the alien is under treatment of a doctor. Also, the alien must have given written consent to BMA to consult the doctor(s) who is/are treating him. Subsequently, BMA will request medical information from the attending doctor through a standardised form.</p> <p>If the medical advisor feels it is necessary to see the alien in person, he or she will be invited for a consultation hour.</p> <p>The Medical Advisors' Office can decide to call upon the expertise of an independent expert in a certain field (other than the attending doctor), if the medical advisor feels the available medical information so requires. This usually occurs if, in the opinion of the medical advisor:</p> <ul style="list-style-type: none"> • the information provided by the attending doctor(s) is incomplete and/or inconsistent; • the attending doctor has made statements which are not supported by the medical information; • doubts have arisen over the reliability of the information provided by the attending doctor(s). <p>3) Advantage: The medical advisor works as an independent medical expert. This prevents misinterpretation by the decision maker of medical information and increases the quality of decisionmaking.</p> <p>Disadvantage: Medical advisors working with the BMA are confronted with many disciplinary procedures being waged. As their advice can result in a negative decision by the IND, this often results in individual complaints against the medical advisor with the medical disciplinary board.</p>

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			<p>4) Referring also to the response to the second question, in the Netherlands there is a strict distinction between attending treating doctors and doctors who give advice (medical advisors). Attending doctors are registered and qualified doctors, who are qualified to practice their profession. This is also checked as part of BMA's advisory procedure. Attending doctors are not allowed to issue medical judgements (like being able to travel and formulating medical travel conditions or judge availability of MedCOI) beyond the facts of diagnosis and treatments details as this would be a breach of doctor-patient confidentiality. The BMA advisory doctor (also registered and qualified doctors) will request objective and factual information from the attending doctor, in order to be able to give a medical advice to the decision maker.</p> <p>The medical advisor has protocols and guidelines at his disposal in order to be able to give a medical advice in a uniform manner.</p>
	Poland	Yes	<p>In accordance with Article 84.1 of the Polish Administrative Procedure Code of 14 June 1960 (Consolidated text Journal of Laws of 2000, No 98, item 1071, as amended), if special information is required in the case, the public administration agency shall have the right to apply to an expert or experts to present opinion. This procedural provision allows the authority carrying out the examination of the residence permit case to appoint a medical expert if needed, however this is rather theoretical possibility than the practice of Polish migration authorities. There are no special regulations for appointing a medical expert in residence permit cases.</p> <p>We generally do not require medical statements of foreigners concerning their state of health during the procedure of granting a residence permit. However one of the bases of rejection of the application for granting the temporary residence permit is the situation when the applicant has been diagnosed with an illness or infection that is subject to obligatory medical treatment according to the Act of 6 September 2001 on infectious diseases and infections (Journal of Law No 126, item 1348, as amended), or there is a suspicion of such disease or infection and the foreigner refuses to undergo medical treatment, we do not check that circumstance systematically.</p> <p>The medical expert could be used for example if the applicant claims that his/her state of health requires his/her residence in Poland. However also the applicant can present an opinion of another medical expert. The authority dealing with the case has to assess on the basis of all evidence if the particular circumstance has been proved.</p> <p>The medical expert can conduct a medical examination of the applicant's state of health but when the direct examination is needed the applicant has to give his/her permission (if no obligatory medical treatment according to the Act of 6 September 2001 on infectious diseases and infections is involved).</p>
	Portugal	Yes	
	Romania	Yes	<p>Romanian legislation provides for only a medical certificate to be provided. No special requirements regarding the doctor issuing the certificate are provided for by the law. These kinds of certificates are usually issued by a GP. In case of suspicions the certificates can be checked at the doctor's office.</p>
	Slovak Republic	Yes	<p>1) and 2) as for the asylum procedure this possibility exists. After receiving the information on the health condition of the asylum seeker from the doctor working in the asylum facility, the Migration Office following the Act on Administrative Proceedings (No. 71/1967) may</p>

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			<p>address the forensic expert in the relevant field, while this list of the experts is available and registered by the court. If this expert discovers that the asylum seeker suffers from severe disease his/her treatment is covered by the Migration Office. This kind of treatment is not in the scope of the regular health insurance of the asylum seekers. Within the asylum procedure also other expert may be addresses such as interpreters. We do have such cases throughout the year – they mostly concern psychiatric cases or cases to check injuries (stabs, shoots, scorch or maltreatment, etc.).</p> <p>3) As for the asylum procedure we have good experiences in this regard. The list of the experts is registred and available by the court and the experts are appointed by the judges. This also secures the objectivity of the healts condition statement procedure.</p> <p>4) As for the asylum procedure based on the Act on Administrative Proceedings (No. 71/1967), Act on forensic experts, interpreters and translators (No. 382/2004) and the related decree 490/2004, to review the health condition also a health institute may be addresses or a medical consilium may be summoned. These will review the case and issue a common conclusions. However we did not have such cases in practice yet.</p> <p>As for the procedure on granting residence permit the third country national applying for the residence permit do not have to undergo a medical check procedure while in the process of decision making on their application. Foreigner who was granted a residence permit is obliged within 30 days after receiving the permit or after crossing the border of the Slovak Republic to hand over to the relevant police department a document proving that he/she does not suffer from a disease which endangers the public health (not older than 30 days). This document is issued by a specialised doctor on the field of infectology.</p>
	Slovenia	Yes	
	Spain	Yes	
	Sweden	Yes	<ol style="list-style-type: none"> 1. Yes, it is possible. The Swedish Migration Board has a list of appointed medical doctors of confidence with different specialities which can be used in the asylum case. 2. The certain medical examiner is only used only when it is necessary for the asylum case to clarify doubts or questions of another medical examiners statement about the health of the asylum seeker. 3. We have been using this kind of medical expertise for a long time and use it with care, only when it's of importance to assess the asylum case or if there are doubts whether the expulsion order can be carried out for health reasons. We have a good experience of this practise which is a way to get a more objective view on the health of the asylum seeker when that is lacking. 4. The National Health and Social Authority have published guide lines for medical examiners on how to write a doctors certificate in a objective way. The Migration Board also have had meetings with health authorities in order to get more objective certificates from medical examiners who meet the asylum seekers. Some certificates have more been a plea in the asylum case than an objective medical assessment.
	United Kingdom	Yes	
	Norway	Yes	The Immigration authorities in Norway do not have a system with appointed medical specialists at our disposal. The asylum seeker has the

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			right to legal aid if necessary and can consult a doctor of his own choice. The Directorate of Health has issued certain guidelines for the medical personal on how to make a report based on the medical consultation. The decision maker is not in direct contact with the medical personal. Sometimes the applicant brings with him medical documents when he arrives in Norway. These documents are put in to his file and will be taken into consideration when the application is decided on.
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