



## **Ad-Hoc Query on transposition of article 9 par. 2 of the Directive 2008/115/EC**

**Requested by LU EMN NCP on 15<sup>th</sup> July 2013**

**Compilation produced on 3 September 2013**

**Responses from Austria, Belgium, Bulgaria, Cyprus, Estonia, Finland, France, Germany, Hungary, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, United Kingdom (20 in Total)**

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### **1. Background Information**

Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals foresees in article 9 entitled: “Postponement of removal” that:

“...” 2. Member States may postpone removal for an appropriate period taking into account the specific circumstances of the individual case. Member States shall in particular take into account: (a) the third-country national’s physical state or mental capacity; (...)

The Directorate of Immigration of the Ministry of Foreign Affairs will like to know how Member States have transposed article 9 of the Directive 2008/115/CE into national law, especially in regards to:

- 1) a) Which is the competent authority and which is the procedure to determine the “third-country national’s physical state or mental capacity”? b) Is the TCN systematically/repeatedly subject to medical examination to determine whether there are any medical reasons which would prevent the removal? Can the competent authority in charge of the medical examination have access to MEDCOI (Medical Country of Origin Information)?

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- 2) Does the fact that there is appropriate and accessible treatment in the country of origin be taken into consideration?
- 3) How serious must be the “physical state or mental capacity” to postpone the removal of the TCN? Are the mental disorders and/or post-traumatic stress taken into consideration for the postponement?
- 4) Are existing illnesses which are treated in the country of origin taken into consideration?
- 5) Please explain what entails the postponement of removal? For how long it is granted? Which are the rights granted to the beneficiary of the postponement of removal? After how long an authorization of stay/residence permit can be granted? Which are the rights granted to the beneficiary of such an authorization of stay/residence permit?
- 6) Can you provide statistics for 2011 and 2012 in regards to postponement of removal (granted and rejected) by country of origin and pathology if available.

We would very much appreciate your responses by 16<sup>th</sup> August 2013.



## 2. Responses<sup>1</sup>

		Wider Dissemination? <sup>2</sup>	<ol style="list-style-type: none"> <li>1) a) Which is the competent authority and which is the procedure to determine the “third-country national’s physical state or mental capacity”? b) Is the TCN systematically/repeatedly subject to medical examination to determine whether there are any medical reasons which would prevent the removal? Can the competent authority in charge of the medical examination have access to MEDCOI (Medical Country of Origin Information)?</li> <li>2) Does the fact that there is appropriate and accessible treatment in the country of origin be taken into consideration?</li> <li>3) How serious must be the “physical state or mental capacity” to postpone the removal of the TCN? Are the mental disorders and/or post-traumatic stress taken into consideration for the postponement?</li> <li>4) Are existing illnesses which are treated in the country of origin taken into consideration?</li> <li>5) Please explain what entails the postponement of removal? For how long it is granted? Which are the rights granted to the beneficiary of the postponement of removal? After how long an authorization of stay/residence permit can be granted? Which are the rights granted to the beneficiary of such an authorization of stay/residence permit?</li> <li>6) Can you provide statistics for 2011 and 2012 in regards to postponement of removal (granted and rejected) by country of origin and pathology if available.</li> </ol>
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<sup>1</sup> 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.

<sup>2</sup> 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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	<b>Austria</b>	<b>No</b>	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	<b>Belgium</b>	<b>Yes</b>	<p><b>ANSWER TO QUESTION 1</b></p> <p><u>Doctors attached to closed/detention centres</u> are competent to undertake medical assessments and take decisions relating to the health of third-country national residents. The Royal Decree of 2 August 2002 stipulates that such doctors are <u>independent</u> from the Director of the retention/detention centre and that their assessments and decisions are solely based on medical criteria. Residents may also contact <u>doctors of their choice at their own expense</u>, ensuring that it is notified to doctors attached to the centre. If the doctor chosen by the resident and the doctor attached to the centre disagree on the treatment, the dispute is <u>arbitrated by a third doctor</u> appointed by the Director General of the Immigration Office.</p> <p>A third-country national who is retained in a closed centre is <u>systematically subject to medical examination upon arrival</u> in the centre (“intake” examination) <u>and before removal</u> (“fit to fly”). In between, medical examinations are possible if deemed necessary by the doctor or upon request of the resident.</p> <p>Doctors who undertake medical assessments of third-country nationals to be removed don’t have access to a database as such (although the creation of a database including useful information on available treatments in countries of origin is in the process of being developed). However they can seek advice from doctors employed by the Immigration Office, dealing with humanitarian requests for medical reasons (article 9ter of the Law of 15.12.1980), who are recruited on the basis of their experiences abroad and therefore have specific knowledge and documentation on foreign pathologies. They may also <u>resort to specialized institutes</u>, such as the Institute of Tropical Medicine (Antwerp-Belgium).</p> <p><b>ANSWER TO QUESTION 2</b></p> <p>Yes the fact that there is <u>appropriate and available</u> treatment in the country of origin is taken into consideration. If the third-country national is still sick and if there is no appropriate treatment available in the country of origin, he/she will not be removed. However if the third-country national is sick and if there is no appropriate treatment available neither in the country of origin or in Belgium, then he/she might be removed (e.g. chronic hepatitis - no life threatening conditions).</p> <p><b>ANSWER TO QUESTION 3</b></p> <p>The Royal Decree of 2 August 2002 stipulates that when the doctors attached to the centre expresses <u>medical objections</u> to the removal of a resident or is of the <u>opinion</u> that his/her <u>physical or mental health is seriously compromised</u> by the detention or any related circumstances, such objections or opinion are transmitted by the director of the centre to the Director General of the Immigration Office who may suspend the enforcement of the removal or detention measure.</p> <p>There is <u>no severity/seriousness level or category</u> determined. Cases are examined on an <u>individual basis</u>. If the <u>doctor</u> attached to the</p>



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			<p>centre, <u>according to his/her conscience and in good faith</u>, determines that the physical or mental state of a resident prevents his/her removal, his opinion is generally followed. When the Director General of the Immigration Office doesn't want to suspend the enforcement of the removal or deprivation of liberty, he must seek the advice of a doctor attached to another centre. If the second doctor confirms the objections of the first doctor, the Director General shall suspend the enforcement of the removal or deprivation of liberty. If the second doctor doesn't confirm the objections of the first doctor, then the opinion of a third doctor is crucial. If the third doctor confirms the objections of the first doctor, the enforcement of the removal or deprivation of liberty is suspended.</p> <p>As stated in the Royal Decree, the mental capacity, that is to say <u>mental disorders and post traumatic stress</u>, are taken into account and may lead to postpone the removal. Such types of disorders <u>don't necessarily but can</u> result in the postponement of removal.</p> <p><b>ANSWER TO QUESTION 4</b></p> <p>Existing illnesses which are treated in the country of origin <u>may on a case-by-case basis be taken into account</u>. As for answer to question 2 the treatment has to be <u>appropriate and accessible</u>. In other words while an illness may be treated in a country of origin, a specific third-country may not have personally access to an appropriate treatment. Please note that, if the treatment is deemed appropriate but not accessible for financial reasons, a financial assistance may be provided for 1 year (special needs).</p> <p><b>ANSWER TO QUESTION 5</b></p> <p>Depending on the case, the person concerned can either see his/her <u>order to leave the territory prolonged</u> (e.g. patient with non-infectious TBC being treated for 3 months as well as patient with contagious TBC in rehab for 1 year and a half) or his/her <u>stay regularized on medical grounds</u> (patient requiring a specific/long-term appropriate treatment in Belgium). The persons with an order to leave the territory postponed are <u>only authorized to stay</u> in Belgium without additional rights. Most of them resort to their personal networks, some are sent to a hospital and others (former asylum seekers) remain in a reception centre. The persons who have their stay regularized on medical grounds are granted a CIRE (certificate of registration in the register of foreigners) and authorized to stay on this basis for a limited period of time. This period is extendable and extended if the person is still sick and proves that he/she is curing him/herself as prescribed.</p> <p><b>ANSWER TO QUESTION 6</b></p> <p>No statistics available.</p> <p>Source: <a href="#">Royal Decree of 2 August 2002</a> + "Aliens Law" of 15 December 1980 + Immigration Office</p>
	<p><b>Bulgaria</b></p>	<p><b>Yes</b></p>	<p>Directive 2008/115/EC article 9(2) is transposed into the Law for the Foreigners in the Republic of Bulgaria (LFRB) article 44 and article 44(b). With regard to the questions concerning especially art. 9(2)(a) the situation is the following:</p> <p>1) a-b) According to the Ordinance № Ih-1201 of 01.06.2010 on the procedure for temporary accommodation of foreigners, the organization and activities of Special Homes for Temporary Accommodation of Foreigners (SHTAF), upon registration in SHTAF foreigners are subject to compulsory medical examination, the result of which is reflected in a medical documentation. Medical</p>


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			<p>examination is performed by a doctor or a nurse in the medical office, located within the SHTAF or by medical specialists from other departments of the MoI Medical Institute. In need of urgent provision of hospital or specialized medical care foreigner is registered in the register under Art. 26, para. 1, item 1 and immediately brought into hospital as security is taken from "Security unit" in SHTAF. Health information for the foreigner is reflected in the register and stored in his personal affairs.</p> <p>Medical services for the foreigners in SHTAF include:</p> <ol style="list-style-type: none"> <li>1. providing primary outpatient care;</li> <li>2. implementation of preventive, rehabilitative and hygiene epidemiological work to maintain and enhance the physical and mental health of foreigners;</li> <li>3. referral for specialized medical care or inpatient treatment in hospitals for outpatient or hospital care.</li> </ol> <p>When no medical service conditions for the necessary treatment, as well as the need to perform consultative examinations or specialized research foreigners are turning to medical facilities outside SHTAF.</p> <p>c) No.</p> <p>2-4) There are no specific explanations on these cases.</p> <p>5) According to article 44b(1) of LFRB "Where immediate expulsion or forcible escort of a foreigner to the border is impossible, or where execution of the said measures has to be postponed for reasons of legal or technical nature, the authority who has issued the order imposing the coercive administrative measure shall postpone the execution of the said measure until the lapse of the obstacles to the execution thereof". According to article 44b(2) "If upon expiration of the temporary protection period granted under the Asylum and Refugees Act it is not possible to expel or forcefully take a foreigner to the national border or those measures should be postponed for health or humanitarian reasons, the authority which has issued the order to enforce the respective compulsory administrative action shall postpone its effectuation until the obstacles to its implementation are no longer in place.</p> <p>6) No.</p>
	<p><b>Cyprus</b></p>	<p><b>Yes</b></p>	<p>1a) and b) The Civil, Registry and Migration Department of the Ministry of Interior is the competent authority to determine the TCN's removal after taking into consideration the special circumstances of each case. The medical condition of a TCN is considered when deciding the removal based on medical reports provided by the TCN.</p> <ol style="list-style-type: none"> <li>1 c) n/a</li> <li>2) Yes it is taken into consideration.</li> <li>3) Please see Article 18PA(2) below. The interpretation of the Article is in accordance with the acquis.</li> <li>4) same as Answer 3.</li> <li>5) Depending on the circumstances of each case, please see Article 18PA(3).</li> <li>6) n/a</li> </ol> <p>Art. 18PA(1)</p> <ol style="list-style-type: none"> <li>(1) The Director shall postpone removal             <ol style="list-style-type: none"> <li>(a) when it would violate the principle of non-refoulement or</li> <li>(b) for as long as a suspensory effect is granted in accordance with Order 13 of the Procedural Orders of the Supreme Constitutional Court of 1962.</li> </ol> </li> </ol> <p>Art. 18PA(2)</p>

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			<p>(2) Without prejudice to paragraph (1), the Director may postpone removal for an appropriate period taking into account the specific circumstances of the individual case and in particular</p> <p>(a) the third-country national's physical state or mental capacity;</p> <p>(b) technical reasons, such as lack of transport capacity, or failure of the removal due to lack of identification.</p> <p>Art. 18PA(3)</p> <p>(3) If a removal is postponed as provided for in paragraph (2) the Director may impose on the third-country national concerned the obligations set out in Article 18OTH, paragraph (3).</p> <p>Art. 18OTH(3)</p> <p>(3) The Director may impose, for partial or the whole duration of the period for voluntary departure, certain obligations aimed at avoiding the risk of absconding, such as the regular reporting to the authorities, deposit of adequate financial guarantee, submission of documents or the obligation to stay at a certain place.</p>
	<b>Estonia</b>	<b>Yes</b>	<p>1) a) Estonia do not have this kind of cases yet – but in general, the third-country national invoking an impediment to the removal for medical reasons must establish through medical certificates that his condition requires medical care without which it can cause him consequences of an exceptional gravity, as well as evidence that s/he may not receive appropriate medical treatment in the country to which s/he is likely to be removed.</p> <p>b) Estonia does not have this kind of cases yet. The designated physician shall conduct examinations as it deems appropriate, but in principle the third-country national is called for a medical examination. The opinion of the designated physician addresses the need for medical care, the consequences of an exceptional gravity and the possibility to receive appropriate treatment in the country to which the third-country nationals may be removed. If the third-country national does not submit to the medical examination, the designated physician will render its opinion based on the medical certificates provided by the third-country national.</p> <p>c) No</p> <p>2) Yes</p> <p>3) There are no specific guidelines - each case should be assessed individually. Estonia does not have this kind of cases yet.</p> <p>4) There are no specific guidelines - each case should be assessed individually. Estonia does not have this kind of cases yet</p> <p>5) Estonia does not have this kind of cases yet.</p> <p>6) No, Estonia does not have this kind of cases yet.</p>
	<b>Finland</b>	<b>Yes</b>	<p>1. a) The competent authority in Finland is Immigration Service. The assessment is based on TCN's medical history and certificates. b) If TCN's removal should be postponed upon medical condition one is granted with temporary residence permit in accordance with Section 51 of the Aliens Act. This permit is valid for one year and TCN's medical condition is assessed again after that. Finnish Immigration Service has access to MEDCOL.</p> <p>2. Yes.</p> <p>3. There are no strict guidelines for assessing the severeness of one's physical or mental condition. TCN's removal should not put one's life under a risk nor should it cause unnecessary suffering. If it is obvious that the removal would shorten the TCN's life and that could be prevented by giving him or her medical treatment in Finland, the TCN is issued with a temporary residence permit. The reason for postponement should also apply for a limited time (eg. sickness should be cured in a year).</p> <p>4. Yes.</p>

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			<p>5. The postponement of removal may become necessary after the TCN has gone through the asylum or residence permit procedure and is waiting for his/her removal. If the TCN considers that his or her medical condition would endanger his/her life, one should file a new application for residence permit and explain his/her condition. The police authorities are responsible for removal, but they do not file a residence permit application on behalf of the deportee, even when several attempts at deportation have failed. When the person concerned has applied for a residence permit, the Finnish Immigration Service examines whether the physical or mental condition would legitimize the TCN for a temporary residence permit in Finland. If the TCN's physical or mental condition was found poor already during the asylum or residence permit process, temporary residence permit may be issued along the decision on removal.</p> <p>Removal from the country may be temporarily prevented due to a reason that is expected to only apply for a limited time. Under Section 51 of the Aliens Act, aliens residing in Finland are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country. Issuing a residence permit does not require the alien to have secure means of support. If aliens are issued with a residence permit under Paragraph 1, their family members residing abroad are not issued with a residence permit on the basis of family ties. Temporary residence permits pursuant to Section 51 of the Aliens Act are granted for a period of one year at a time. Aliens granted temporary residence permits on such grounds have a restricted right to employment under Section 80, Paragraph 1, Subparagraph 6 of the Aliens Act.</p> <p>6. Temporary residence permit upon postponement of removal (Section 51 of the Aliens Act) was granted to 4 persons in 2011 and 3 in 2012.</p>
	<p><b>France</b></p>	<p><b>Yes</b></p>	<p><b>1/ a)</b> The determination of the “third-country national’s physical state or mental capacity” is realized at the end of a double process:</p> <ol style="list-style-type: none"> <li>a. <u>The medical authority</u><sup>3</sup> <u>notifies a reasoned opinion</u>. This opinion must detail the five following points: 1/ does the third-country national’s physical state or mental capacity necessitate medical care? 2/ If care is not provided, can it result in serious consequences on the third-country national’s physical state or mental capacity? 3/ Can the third-country national be cared in his country of return? 4/ How long can last the care? 5/ Does the third-country national’s physical state or mental capacity allow him to travel without risk to his country of return? If needed, the doctor of the Regional health agency can convene a regional medical commission to conduct a shared examination of the third country national’s situation (he can be convened to this commission).</li> <li>b. <u>The prefect</u> receives this reasoned opinion and is theoretically not forced by the medical conclusions. He is in charge of justifying the elements that lead him to put this opinion aside in case of disagreement. De facto, only reasons linked to fraud or public order can block a medical opinion in favor of a postponement of removal.</li> </ol> <p><b>b)</b> The TCN is not regularly subject to medical examination (but access to care is one of the notified rights of TCN placed in detention centres), but medical examination is systematic as long as the TCN calls upon his/her physical state or mental capacity to postpone his/her removal. Generally, he/she mentions his/her situation when he/she is notified about the removal order or when he/she his placed in a detention centre.</p> <p>The competent authority in charge of the medical examination has access to MEDCOI.</p>


<sup>3</sup> It is a doctor delegated by the competent Regional health agency on the territory – in Paris, it is the head-physician of the medical service of the police prefecture.

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			<p>2/ Yes.</p> <p>3/ According to article L. 511-4, §10 of the Code on Entry and Residence of Foreigners and Right of Asylum (CESEDA), it must be a “physical state that necessitates medical care, which could, if not given, lead to [...] exceptionally serious consequences, provided that there is no accessible treatment in the country of return”.</p> <p>Mental disorders and/or post-traumatic stress are taken into consideration for the postponement.</p> <p>4/ Yes.</p> <p>5/ The postponement of removal and its length depend on the medical opinion. However, in the most significant cases, a short-term residence permit entitled “private and family life” can be granted.</p> <p>No specific rights or guarantees are granted to the beneficiary of the postponement of removal (except the protection against removal). The residence permit is valid for 1 year.</p> <p>6/ France does not have that kind of statistics. However, some figures can be given: TCN detained in detention centres and freed on the basis of their physical state were 422 in 2011, 382 in 2012 and 149 during the first semester of 2013.</p>
	<p><b>Germany</b></p>	<p><b>Yes</b></p>	<ol style="list-style-type: none"> <li>1. The responsibility for the enforcement of removals (and, consequently, for decisions concerning the suspension of removals) lies with the local aliens office. The responsible office does not automatically initiate an examination of the respective alien, but will do so only in cases where specific circumstances give rise to doubts regarding if a person is capable of travelling. If the respective office does not have access to the MEDCOI database, it may retrieve such information via the Federal Office for Migration and Refugees.</li> <li>The Federal Office for Migration and Refugees is also being asked to comment on many decisions made by the local aliens’ registrations offices involving deportations. The Federal Office for Migration and Refugees may determine potential reasons preventing a removal in cases where aliens face severe and concrete dangers to life, limb or freedom on returning to their respective country of origin. This is for example the case with regard to severe illnesses which can not be treated in the country of origin, resulting in a risk of serious injury to a person’s health.</li> <li>2. Yes, in particular if the relevant person is capable of travelling and the required medical treatment can be provided after the removal.</li> <li>3. The removal is suspended if the affected person is not capable of travelling due to their physical or psychological condition, irrespective of the particular cause of the condition.</li> <li>4. See answers to items 2. and 3.</li> <li>5. The person in question receives a written certification confirming the suspension of the removal (Duldung). If the reason preventing departure is likely to prevail in the foreseeable future, it is possible to issue a residence permit for the relevant person. Such permit shall be issued after a period of 18 months with the person in question holding a temporary suspension of the removal (Duldung). In order to ensure a sustainable livelihood and the necessary medical care for the</li> </ol>




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			<p>relevant person, they receive benefits in accordance with the German Asylum-Seekers' Benefit Act.</p> <p>6. Reasons for suspending a removal are not recorded in the central aliens register Therefore, the requested statistical data can not be provided.</p>
	<b>Hungary</b>	<b>Yes</b>	<p>1. The competent authority is the Office of Immigration and Nationality (hereinafter referred to as OIN), the procedure is determined in the Act No. II of 2007 (hereinafter referred to Act on TCN) and in the Government Decree No 114/2007. (V. 24) on the implementation of Act No. II of 2007 (hereinafter referred to Gov. Decree on TCN). According to Art. 131 (2) of the Gov. Decree on TCN community shelter can be established in such a building where a doctor's office with the purpose of basic and emergency care - and fulfilling the minimum criteria of a family doctor -, a room for the purpose of medical examination and a medical isolation room can be granted.</p> <p>People under expulsion order are under continuous medical control. If there is no medical problem prior to the forced return by air of the third-country national a document called 'fit-to-fly / "Fit-for-fly will be issued by a doctor, by which the expulsion can be implemented.</p> <p>The OIN has no access to the MEDCOI system.</p> <p>2.) The OIN, in all cases where this is an issue, examines if there are appropriate and available services in the given destination country.</p> <p>3.) If a medical opinion based on the person's physical or mental health determines that the foreigner can't travel by air, the expulsion will be not executed.</p> <p>According to 5. §-a of (Ministry of Justice and Law) Decree No. 26/2007. (V.31.) on the rules of execution of expulsion a psychologist and specialist can participate in the implementation of expulsion. If prior to the implementation of expulsion by air escorted by authorities a (specialist) doctor provides the document of 'Fit-to-fly, the expulsion can be performed.</p> <p>4.) If the foreigner makes the documentation related to his illness or medical treatment available, it will be assessed throughout the procedure.</p> <p>5.) According to Art. 65 (8) b) of the Act on TCN the expulsion should be discontinued if it cannot be implemented due to the physical condition of the person that indicates an urgent medical treatment.</p> <p>If the medical condition of the foreigner justifies the placement in a medical facility, than an obligatory residence will be assigned. According to Art. 30 (1) h) or j) of the Act on TCN a certificate of temporary residence will be issued. According to</p>


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			<p>Art.30 (1) h) of the Act on TCN the certificate for temporary residence is valid for a period of up to three months, which occasionally can be extended up to three months; according to the case in the Art. 30 (1) j) of the Act on TCN the certificate is valid for a period of six months and may be extended by six months.</p> <p>6.) The OIN has no statistics about this topic.</p>
	<p>Italy</p>	<p>Yes</p>	<p><b>1) a) Which is the competent authority and which is the procedure to determine the “third-country national’s physical state or mental capacity”?</b>                  The doctor belonging to the National Health Service, upon request of the competent authorities in charge with the removal order or required by the foreign national defender or upon request of the judge, carries out the visit (possibly with the assistance of a psychiatrist) and issues a certificate stating the conditions of physical and mental health of the foreign national.</p> <p><b>b) Is the TCN systematically/repeatedly subject to medical examination to determine whether there are any medical reasons, which would prevent the removal? Can the competent authority in charge of the medical examination have access to MEDCOI (Medical Country of Origin Information)?</b>                  The Italian legislation, in the light of several decisions of the Supreme Court of Cassation, prevents the removal of a foreign national who would suffer irreparable harm from the immediate enforcement of the measure, since this guarantee must include not only emergency care services and emergency medicine but also all other services essential to life.</p> <p>The legislation, however, does not expressly provide that all persons who are to be removed have to undergo a medical examination. There is, however, a common practice within the CEI (Identification and Expulsion Centre) according to which all foreigners detained in a Centre have undergone a medical examination. Since there is no common protocol, the ways in which the medical examinations are conducted are very different from each other. In general, the medical examination is limited to determining whether there are serious disabling diseases (need for urgent surgical intervention, after-effects of surgery, ability and inability to ambulate, infectious diseases and the like besides psychological disorders. There is no evidence that the doctor, as well as the staff responsible for the enforcement of the removal order, has access to MEDCOI.</p> <p><b>2) Does the fact that there is appropriate and accessible treatment in the country of origin be taken into consideration?</b>                  Generally these circumstances are taken into account only at the explicit warning of the foreigner and, as a rule, directly by the judge during the validation proceedings of the removal order.</p> <p><b>3) How serious must be the “physical state or mental capacity” to postpone the removal of the TCN? Are the mental disorders and/or post-traumatic stress taken into consideration for the postponement?</b>                  Health care services in Italy, also in the case of mental health problems (for which the removal of a foreign national is forbidden) must be assessed not only with reference to the provision of first aid and emergency treatment, but also as an essential service for the life of a person. The removal is also forbidden in case of simple administration of medication in life-saving treatment to people at risk or when major health problems strike, in relation to the unavailability of drugs in the Country to which the foreign national should be removed.</p> <p><b>4) Are existing illnesses, which are treated in the country of origin taken into consideration?</b>                  Yes, but only if at the time of the removal it is necessary to ensure health care as described at point 3)</p>


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			<p><b>5) Please explain what entails the postponement of removal? For how long it is granted? Which are the rights granted to the beneficiary of the postponement of removal? After how long an authorization of stay/residence permit can be granted? Which are the rights granted to the beneficiary of such an authorization of stay/residence permit?</b></p> <p>When a measure of the postponement of removal for health reasons is adopted (which normally occurs following a judge's ruling) a residence permit on humanitarian grounds is issued on the benefit of the TCN (only in rare cases some Questura – Italian Police Headquarters issue a permit for medical care). The residence permit on humanitarian grounds has a one-year expiration date and the deadline may be extended further if the beneficiaries of a permit of stay are still in the need for medical treatment. Those with a residence permit for humanitarian reasons are allowed to perform a job and it can be converted into other type of residence permit (work, family, etc.) in line with the law.</p> <p><b>6) Can you provide statistics for 2011 and 2012 in regards to postponement of removal (granted and rejected) by country of origin and pathology if available.</b></p> <p>The information is not available in the breakdown requested.</p>
	<p><b>Latvia</b></p>	<p><b>Yes</b></p>	<p><b>1)</b></p> <p><b>a) Which is the competent authority and which is the procedure to determine the “third-country national’s physical state or mental capacity”?</b></p> <p>The Cabinet Regulations No 434 Regulations regarding the Residence Norms of Third-country Nationals Placed in an Accommodation Centre, as well as the Amount and Procedures for Receipt of Guaranteed Health Care Services point 19 defines that a person shall be provided with health care services at an outpatient medical treatment institution in such a level and amount that his or her health condition:</p> <ul style="list-style-type: none"> <li>19.1. would allow outpatient medical treatment at the accommodation centre;</li> <li>19.2. would not cause a threat to the health and safety of other persons; and</li> <li>19.3. would allow the expulsion of the person from the State until conveyance to the respective state, to which he or she has been expelled.</li> </ul> <p>The Cabinet Regulations No 454 Regulations regarding forced removal of the third country nationals, standard travel document and issue thereof point 20 foresee that the State Border Guard shall suspend the implementation of the forced removal of the third-country national for a specific period of time if:</p> <ul style="list-style-type: none"> <li>20.1. the state of health of the third-country national prevents the implementation of forced removal;</li> <li>20.2. the implementation of forced removal is not possible due to technical reasons, or the issue of the travel (return) document of the third-country national is delayed; or</li> <li>20.3. the circumstances referred to in Section 47 of the Immigration Law are determined (<i>non-refoulement principle</i>).</li> </ul> <p><b>b) Is the TCN systematically/repeatedly subject to medical examination to determine whether there are any medical reasons which would prevent the removal?</b></p> <p>The foreigner is medically examined by a doctor, who is working in the detained foreigners’ accommodation center before removal</p>


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			<p>and makes a conclusion that the state of health allows to remove a foreigner.</p> <p><b>Can the competent authority in charge of the medical examination have access to MEDCOI (Medical Country of Origin Information)?</b> The competent authority in charge of the medical examination does not have access to MEDCOI.</p> <p><b>2) Does the fact that there is appropriate and accessible treatment in the country of origin be taken into consideration?</b> There is no special regulation on this issue.</p> <p><b>3) How serious must be the “physical state or mental capacity” to postpone the removal of the TCN? Are the mental disorders and/or post-traumatic stress taken into consideration for the postponement?</b> It is not specified in the normative regulation.</p> <p><b>4) Are existing illnesses which are treated in the country of origin taken into consideration?</b> Such requirement is not foreseen in national law.</p> <p><b>5) Please explain what entails the postponement of removal? For how long it is granted? Which are the rights granted to the beneficiary of the postponement of removal? After how long an authorization of stay/residence permit can be granted? Which are the rights granted to the beneficiary of such an authorization of stay/residence permit?</b> In accordance with Article 49 of Immigration law the Head of the authority that issued a removal decision as well as the decision on entry ban may revoke or suspend the decision taken if the changed circumstances give the ground to change such decisions, including those foreseen in Article 47 of this law (<i>non-refoulement principle</i>) or for humanitarian reasons. Which are the rights granted to the beneficiary of the postponement of removal? The removal is postponed until the time when the enforcement of removal is possible. At the time of postponement of removal there is no additional rights granted to foreigner.</p> <p><b>After how long an authorization of stay/residence permit can be granted?</b> The postponement of removal does not foresee granting of authorization of stay or residence permit.</p> <p><b>6) Can you provide statistics for 2011 and 2012 in regards to postponement of removal (granted and rejected) by country of origin and pathology if available.</b> There is no such statistical data.</p>
	<p><b>Lithuania</b></p>	<p><b>Yes</b></p>	<p>Article 128 (2)(3) of the Law on the Legal Status of Aliens (hereinafter – the Law) states that the implementation of the decision to expel an alien from the Republic of Lithuania shall be suspended if the alien is in need of basic medical aid, the necessity of which is confirmed by a consulting panel of a health care institution. The list of illnesses is provided for in the order of the Minister of the Health of the Republic of Lithuania (it provides for the mentioned list of illnesses, the type and the scale of medical aid). The decision on the suspension is taken by the Migration department or Vilnius Regional Administrative Court.</p>


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			<p>Article 128 (3) of the Law provides that upon the disappearance of the reasons indicated above the decision to expel an alien from the Republic of Lithuania must be implemented immediately.</p> <p>With regard to the Article 132 of the Law if an alien's expulsion from the Republic of Lithuania has been suspended due to the circumstances mentioned above, these circumstances have not disappeared within one year from the suspension of the implementation of the decision to expel the alien from the Republic of Lithuania and the alien has not been detained, he/she shall be issued a temporary residence permit. And when the possibility to expel emerges the mentioned permit shall be withdrawn.</p> <p>And there were no such cases.</p>
	<p><b>Luxembourg</b></p>	<p><b>Yes</b></p>	<p>1. a) The third-country national invoking an impediment to the removal for medical reasons must establish through medical certificates that his condition requires medical care without which it can cause him consequences of an exceptional gravity, as well as evidence that s/he may not receive appropriate medical treatment in the country to which s/he is likely to be removed.</p> <p>Decisions concerning the postponement of the removal for medical reasons are taken by the minister responsible for immigration on a motivated opinion by the physician of the Directorate of Health designated for this purpose by the Ministry of Health (Articles 130 to 132 of the Law of 29 August 2008 on the free movement of persons and immigration). The medical certificates provided are sent to the medical officer so s/he can deliver his/her motivated opinion.</p> <p>d) The designated physician shall conduct examinations as it deems appropriate, but in principle the third-country national is called for a medical examination. The opinion of the designated physician addresses the need for medical care, the consequences of an exceptional gravity and the possibility to receive appropriate treatment in the country to which the third-country nationals may be removed. If the third-country national does not submit to the medical examination, the designated physician will render its opinion based on the medical certificates provided by the third-country national.</p> <p>In the context of decisions concerning the renewal of the postponement of removal, often the opinion is taken on the basis of medical certificates provided without further medical examination.</p> <p>e) Yes.</p> <p>2. According to article 131 (3) of the Law of 29 August 2008 the opinion must address possibility to receive appropriate treatment in the country to which the third-country nationals may be removed.</p> <p>3. There are no specific guidelines on this issue.</p> <p>4. There are no specific guidelines on this issue.</p> <p>5. According to article 131 of the Law of 29 August 2008 the third-country national who fulfils the conditions listed in article 130 can obtain a postponement of removal for a maximum duration up to six months. This postponement is renewable, without going beyond a duration of two years. The Directorate of Immigration will grant a certificate of postponement of removal, which allows him/her to remain in the territory without being entitled to stay.</p> <p>The Minister may extend the benefit of postponement of removal to family members who accompany the beneficiary for a period equal to that granted to the principal beneficiary.</p> <p>The certificate gives the recipient the possibility to benefit from a humanitarian aid as defined in Article 27 of the Law of 18 December 2009 organizing social aid. Furthermore, the Minister may grant to the beneficiary a temporary occupation permit (Autorisation</p>



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			<p>d'occupation temporaire) for a maximum period of six months, renewable for a similar period which may not however exceed the duration of the postponement of removal. This temporary occupation permit is subject to the conditions of Article 42 of the law of 29 August 2008 and is only valid for a specific employer and a single profession.</p> <p>If, at the expiration of the two years period mentioned above, the third-country national foreign provides evidence that his/her condition as described in article 130 persists, the applicant may obtain an authorisation to stay for medical reasons for the duration of treatment. This authorisation cannot exceed one year. At its expiration it can be renewed after re-examining the applicant's situation. This authorisation gives the same rights accorded to other kinds of authorisations to stay.</p> <p>6. N/A</p>
	<p>Netherlands</p>	<p>Yes</p>	<p><b>Answer to questions 1, 2 &amp; 3:</b></p> <p>An invocation of Article 64 of the Aliens Act is a request made in writing to the Immigration and Naturalisation Service (IND) and substantiated with all the data and documents needed for the assessment of the question of whether the repatriation can take place in view of the health of the person involved. At least the following documents need to be submitted:</p> <ul style="list-style-type: none"> <li>• A fully completed and signed Medical Information Disclosure Consent Form. The Disclosure Consent Form may not be older than 6 months.</li> <li>• A statement that the person is under medical treatment.</li> </ul> <p>These documents are forwarded to the Medical Advisors Office. This agency will assess the foreign national's medical situation, based on the medical information provided by the treating physicians. In her advice, the Medical Advisors Office will, look in general at the following circumstances:</p> <ul style="list-style-type: none"> <li>• whether the person concerned is medically able to travel in view of his health; and if certain medical travel conditions are necessary</li> <li>• discontinuation of the medical treatment [all medical treatment both for physical and psychiatric problems like for example PTSD] will lead to a medical emergency within 3 months ; and</li> <li>• if medical treatment of the medical complaints in question is available [available, partly available; sufficient or insufficient or not available] in the country of origin or another country to which the person involved can depart to. The medical advisors have access to MedCOI.</li> </ul> <p>The decision concerning the postponement of the repatriation is in most cases taken after the Medical Advisors Office has been consulted by the IND. Only in the situations where it is clear without medical interference that someone is (un)able to travel, this consultation does not take place.</p> <p>During the investigation and processing of the request, the foreign national does not have lawful residence and is therefore, in effect, still obliged to leave the Netherlands. However, in principle, the authority to repatriate will not be used as long as no decision has been taken regarding the request.</p> <p>4. Yes.</p>

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			<p>5. If the request is granted, the IND will inform the foreign national in writing that the repatriation is postponed. Also, the period of time for which the departure is suspended will be communicated. The suspension period normally equals to the period the medical impairment is expected to last. The suspension period is never longer than one year. After one year of suspension, a new assessment of the health situation takes place.</p> <p>The foreign national and his family members will have lawful residence and will be entitled to reception provisions during this period. However, they will not be given a residence permit and therefore will not have a residence status. At the end of the period during which repatriation is withheld, the foreign national and his family will still have to leave the Netherlands as only the obligation to leave and the authority to repatriate are suspended.</p> <p>6. N/a.</p>
	<p><b>Poland</b></p>	<p><b>Yes</b></p>	<p>1. a ) A medicine doctor is the only authority competent to assess “third-country national’s physical state or mental capacity”. Poland decided not to implement art. 9 par. 2 a) of the Directive 2008/115 which the European Commission considers optional, so the assessment of the foreigner’s condition is important only in case of:</p> <ul style="list-style-type: none"> <li>- placement of the foreigner in the detention centre and his further staying in the centre</li> <li>- admission of the foreigner to participation in a forced removal (the final decision is taken by the medicine doctor who is also present during the charter flights)</li> </ul> <p>Every foreigner must pass a medical examination before being placed in a detention centre in order to exclude any obstacles to this placement.</p> <p>Art. 117 par. 1 p. 4 of the act on foreigners defines the right of the foreigner to the medical care.</p> <p>According to art. 113 of the act on foreigners a person admitted to the detention centre passes immediately medical examinations and all necessary sanitary treatments. Foreigner is under medical care during the whole stay in the detention centre. In case of contagious diseases foreigners receive all necessary medical services, in line with national legislation.</p> <p>Medical examinations are performed according to the ordinance of the Minister of Interior and Administration of 27 June 2002 on the procedure of medical examinations of persons stopped by the Border Guard. Medical documentation, in which every examination is registered, is hold for the foreigner.</p> <p>b) Foreigners awaiting expulsion in the guarded centres for foreigners have regular medical examinations.</p> <p>According to par. 27 of the ordinance of the Minister of Interior and Administration of 26 august 2004 on the conditions in the guarded centres and arrests for the purpose of expulsion, every foreigner must pass medical examinations at least once a month as well as before the expulsion itself and before each transportation.</p> <p>c) The Polish Border Guard does not have access to the MEDCOI (Medical Country of Origin Information).</p> <p>2. According to Polish legislation there is no obligation to take under consideration appropriate and accessible treatment in the country of origin. The Border Guard is considering the foreigner’s condition in the context of his/hers participation in a forced removal. If the foreigner’s condition does not allow that, the removal is postponed.</p> <p>3. Poland has not implemented art. 9 par. 2 a) of the Directive 2008/115. In case of the participation of a foreigner in forced removal, the medicine doctor is taking the final decision and each case is studied individually.</p> <p>4. According to Polish legislation there is no obligation to take under consideration appropriate and accessible treatment in the</p>

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			<p>country of origin.</p> <p>5. According to art. 97 par. 1 p. 2 of the act on granting protection to foreigners in the territory of the Republic of Poland a foreigner can be granted tolerated stay when the decision on expulsion is unenforceable due to reasons beyond the authority executing the decision on expulsion or beyond this foreigner. In such case the foreigner can be obliged to register in given periods of times to the defined state organ and inform it about each change of the residence place. The tolerated stay can be granted for one year with possibility of expanding it for another year.</p> <p>According to art. 102 par. 1 of the act on granting protection to foreigners in the territory of the Republic of Poland the permit for tolerated stay shall be withdrawn if:</p> <ul style="list-style-type: none"> <li>- the reason for granting the permit for tolerated stay has ceased to exist</li> <li>- a foreigner did not follow the obligation of registering in given periods of times to the defined state organ and informing it about each change of the residence place</li> <li>- a foreigner has voluntarily applied for protection to the authorities of the country of origin</li> <li>- a foreigner has left permanently the territory of the Republic of Poland</li> <li>- it may constitute a threat to the state security and defence as well as to the public security and policy</li> </ul> <p>The foreigner granted tolerated stay is not entitled to cross the Polish border.</p> <p>Furthermore, there is a possibility to grant a foreigner staying in Poland illegally a permit to stay for a fixed period if his/hers personal situation requires presence in the territory of Poland. Such a permit can be issued for a period necessary to realise of the objective of stay but no longer than 3 months.</p> <p>6. The Border Guard does not gather statistics about postponement of removal.</p>
	<p><b>Portugal</b></p>	<p><b>Yes</b></p>	<p>1) a) The postponement of the removal for medical reasons is decided after the medical evaluation of the physical state or mental capacity and is a physician who certifies the temporary incapacity of the TCN for the removal. b) The medical evaluation and examination depends on the concrete clinical situation.</p> <p>2) Depending on the concrete clinical situation and there are no specific guidelines.</p> <p>3) Depending on the concrete clinical situation where the mental disorders and/or post-traumatic stress can be taken into account. However there are no specific guidelines.</p> <p>4) The infectious or high contagious diseases may be considered.</p> <p>5) Depending on the concrete situation. The deadline can be extended until the elimination of risks to the physical integrity or be granted a residence permit for medical treatment (Article 122.º, No. 1, paragraph g) Immigration Act) with the assumption of all the rights of foreign citizens resident in Portugal.</p> <p>6) There aren't statistics available or sufficient practice that allows the establishment of actuation patterns</p>
	<p><b>Slovenia</b></p>	<p><b>Yes</b></p>	<p>1.a) A medical examination of the alien usually takes before his/her settlement in the adequate department of the Alien Centre or the latest on the first working day after an alien has been settlement on the Alien Centre. A medical examination contains from basic health and psychophysical conditions of an alien. About an alien's health and other conditions which are</p>



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			<p>important for taking decision on alien's residence in the Centre or his/her removal from the Centre a doctor needs to inform the Head of the Alien Centre of any other authority.</p> <p>b) In case that an alien needs further special health nursing the Centre assuring all necessary conditions if this is not possible then an alien is transferred in the Hospital (such as emergency cases, special illness, etc).</p> <p>2.) Decision is done by a doctor.</p> <p>3.) In case that an alien removal from country will treated an alien's life the Police has authority to take decision about alien's postponement of removal from the country.</p> <p>4.) there are no any specific guidelines</p> <p>5.) According to the Alien Act postponement of removal means permission granted by the Police to an alien who must be deported to remain temporarily in the Republic of Slovenia. Permission to stay shall be granted at the request of the alien or <i>ex officio</i> for a period of six months. The permission may be renewed at the alien's request or <i>ex officio</i> for as long as the conditions for postponement of removal exist. Permission not cancels or in any way changes the alien's obligation to depart from the country. An alien who has been granted a temporary stay in the Republic of Slovenia have the right to emergency health insurance and health insurance and to basic treatment, social support allowances, while alien minor schoolchildren shall also have the right to basic education</p> <p>6.) N/A</p>
	<p><b>Spain</b></p>	<p><b>Yes</b></p>	<p>1) TCN are not systematically or repeatedly subject to medical examinations. They are subject to a medical examination when entering a detention centre. In the remaining situations, medical examinations are carried out when the TCN asks for them or some symptom is noticed by the police staff in charge of preparing or carrying out the return. Anyone who is arrested, including TCN for return purposes, is informed about his right to be examined by a doctor. If the person is found not to be fit for the return trip, removal can be suspended or postponed by the issuing authority of the return decision (Government delegate in the province). Spain does not participate in MEDCOI.</p> <p>2) In some cases this may influence the decision, but the main fact taken into consideration is if the person is likely to suffer any harm by the transfer.</p> <p>3) Serious enough to increase the risk of the transfer. Mental problems are also taken into consideration.</p> <p>4) Yes.</p> <p>5) Removal is postponed until all the necessary conditions for removal are met. No specific duration is established. The rights granted are family unit, emergency health care and essential treatment of illness, access to education for minors and taking into account the special needs of vulnerable persons. Postponement of removal does not give right to a residence permit.</p> <p>6) We have no statistics available.</p>
	<p><b>Sweden</b></p>	<p><b>Yes</b></p>	<p>Medical impediments to a removal mean that the TCN has a severe disorder that makes a removal impossible. The crucial fact is not how severe the disease is. Instead it is whether the actual disease makes impediments to a removal.</p> <p>1. It's necessary with medical certificates stating that the TCN's condition is so severe that a removal could endanger his or her life and that there are no availability for treatment in the country of origin. Decisions about removal for medical reasons are made by the Swedish Migration Board. It's the Aliens Act chapter 12 section 18 that regulate these issues.</p>

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			<p>b. Yes. The Migration Board also has the possibility to use medical officer entrusted by the Migration Board. Yes, the Migration Board has the possibility to use MEDCOI.</p> <p>2. Yes.</p> <p>3. No guidelines. It's individual circumstances and the concise picture that makes ground for decision.</p> <p>4. See above.</p> <p>5. Aliens Act Chapter 12 Section 18 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</p> <p>there is an impediment to enforcement under Section 1, 2 or 3,</p> <p>there is reason to assume that the intended country of return will not be willing to accept the alien or</p> <p>there are medical or other special grounds why the order should not be enforced,</p> <p>the Swedish Migration Board may grant a permanent residence permit if the impediment is of a lasting nature.</p> <p>If there is only a temporary impediment to enforcement, the Board may grant a temporary residence permit.</p> <p>The Swedish Migration Board may also order a stay of enforcement.</p> <p>6. N/A.</p>
	<p><b>United Kingdom</b></p>	<p><b>Yes</b></p>	<p>The UK is not a signatory to the directive but nonetheless would take account of a person's health before removing them from the UK.</p> <p>1) Officials of the Home Office would have regard to medical reports on the individual in determining whether a person's detention and removal is appropriate. All people detained in an immigration removal centre receive a health care screening, normally with a nurse, within two hours of arrival and a physical and mental examination by a doctor within 24 hours. Whilst medical records for detainees are confidential and unavailable to the Home Office there is an exception where a medical practitioner believes a detainee's health is likely to be injuriously affected by continued detention. In such circumstances, they will inform the Home Office accordingly. An individual will not be removed if a medical</p>

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			<p>examiner declares them unfit to fly although if the person just needs assistance on the flight the person may be removed with a medical escort.</p> <p>The Home Office also has guidance to staff for when a person raises medical problems as a reason why a removal should not go ahead. Chapter 53 of Enforcement Instructions and Guidance (and 53.8 in particular) advises staff to ascertain full details of the condition, obtain a doctor's letter outlining the condition and whether the person is fit to travel, or when they will be fit. They should also establish if the person has anyone in his home country to provide any necessary care and check the likelihood of treatment being available there.</p> <p><a href="http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter53?view=Binary">http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter53?view=Binary</a></p> <p>2) Officials would give due regard to the availability of treatment in the home country but the fact it may not be of the same standard or as readily available as in the United Kingdom would not be a reason for allowing a person to remain.</p> <p>3) Generally they must be unfit to fly to justify cancellation of removal directions</p> <p>4) same response as 2</p> <p>5) Where a person is deemed unfit for travel then they would either remain in detention until such time as they were fit to travel or if this period is likely to be protracted (or they are not detained) then it is likely they would be given a limited period of temporary admission usually on a condition that prohibits employment.</p> <p>6) Details of deferrals of removal are not recorded centrally and the information is not available.</p>
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