



Ad-Hoc Query on access to the labour market for asylum seekers

Requested by AT EMN NCP on 9th January 2013

Compilation produced on 14 February 2013

Responses from Belgium, Bulgaria, Cyprus, Czech Republic, Estonia, Finland, France, Greece, Hungary, Italy, Latvia, Luxembourg, Malta, Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom plus Norway (21 in Total)

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1. Background Information

The last Ad-Hoc Query on the access of asylum seekers to the labour market was forwarded in 2010. Due to the envisaged new Asylum Reception Conditions Directive, Austria would be interested in the current situation in the Member States and possible changes in the future:

2. Responses¹

		Wider	1. Do asylum seekers in general have access to the labour market when their application for asylum is pending?
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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.

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		Dissemination? ²	<p>2. What are the deadlines until an access to the labour market is granted (Art. 11 /1 of current RCD 2003/9/EC) (Art. 11/1 RCD: Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.)</p> <p>3. Do you apply Art. 11/4 of the RCD? Meaning even if there is an access to the labour market do you give priority to EU citizens and other legally resident third-country nationals? (Art. 11/4 RCD: For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals)</p> <p>4. In case an asylum seeker wants to open his/her own self-employed business. Do the general rules on labour market access also apply?</p> <p>5. Do you currently plan any legislative or practical changes on the issue of labour market access for asylum seekers?</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. Asylum seekers have access to the labour market in Belgium. However, the asylum seeker can only apply for a work authorization when there hasn't been a first instance decision in the asylum application by the Commissioner general for Refugees and Stateless Persons within six months following the registration of his application for asylum. After these six months the asylum seeker can request a labour card C. For a person who is granted the refugee status he or she no longer needs to request for a labour card to be in the possibility to work.</p> <p>2. Yes, access to the labour market can not be granted during the first 6 months after the asylum application. (see answer on question 1)</p> <p>3. There is no labour market test for citizens from Romania or Bulgaria when it is concerning a bottle-neck occupation. Other EU-citizens do not need a labour card. Asylum seekers need to apply for a labour card C. The labour card C that is issued to asylum seekers in procedure allows the asylum seeker to do whatever job in salaried employment for whatever employer. However, the labour card C is only valid for 12 months and can be renewed as long as the person is still in the asylum procedure at that time. There is no labour market test for asylum seekers. Third -country nationals (non-asylum seeker) who want to work in Belgium, need to apply for a labour card B, which allows them to work for a specific employer. Before granting this labour card B a <u>labour market test is done</u>.</p> <p>4. An asylum seeker must apply for a "professional card" to open a self-employed business. Given the uncertain residence for the asylum applicant, it is not allowed that the self-employed activity requires large investments. The application will be assessed on several criteria (financial analyses etc,...) If the professional card is granted to the asylum seeker, he or she will be allowed to work as an independent worker. In case the refugee status is granted it is no longer necessary to apply for a professional card.</p> <p>5. No</p>
	Bulgaria	Yes	<p>1. Yes, provided that the requirement in 2. is met.</p> <p>2. An asylum seeker has access to the labour market in Bulgaria when there has not been a final decision on his asylum application within</p>

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>twelve months after the submission of the application, for reasons the asylum seeker is not responsible for.</p> <p>5. Yes, discussions of possible amendments to the Bulgarian Law on Asylum and Refugees, including the provision related to asylum seekers' access to the labour market, are currently underway. The legislative changes will be introduced in relation to the forthcoming transposition of EU Directives in the field of asylum.</p>
	Cyprus	Yes	<ol style="list-style-type: none"> 1. All asylum seekers have access to certain areas of the labour market, which are defined by a Ministerial Order, 6 months after the submission of the asylum application. 2. Asylum Seekers have access to the labour market 6 months after the submission of the asylum application. During this period they have the right to be accommodated to a Reception Centre and are also entitled to subsistence allowance. 3. Yes 4. Yes. As mentioned above, there are only certain sectors of the economy that an asylum seeker can access, which are defined by a Ministerial Order: <ol style="list-style-type: none"> (a) Farming – Agriculture – Fishery: Workers at the sectors of agriculture, farming (animal husbandry) and fishery (b) Manufacturing: Animal food production (c) Waste management: Workers at the sectors of sewage system and waste processing, of collection and processing of waste (garbage), at the sectors of recycling and processing of animal waste and abattoir by-products. (d) Trade and Repairs: Workers at gas stations and car-wash, porters of wholesale trade (e) Other activities: Cleaning of buildings and outside areas, distributors of advertising or informative material, food delivery. <p>No</p>
	Czech Republic	Yes	<ol style="list-style-type: none"> 1) Yes. 2) Asylum seekers are only allowed to take up employment after a period of 12 months after submission of application for international protection. 3) No. While asylum seekers still do need work permit, the labour market test is not applied. 4) The law stipulates that long term visa or residence permit is necessary if a third country national wishes to run business, therefore asylum seekers are not allowed to do so. 5) No.
	Estonia	Yes	<ol style="list-style-type: none"> 1. Asylum seekers in Estonia don't have right to automatically access to the labour market. Persons who have applied for asylum in Estonia may take employment only with the permission of the Police and Border Guard Board (PBGB) and if decision has not made within one year since the submission of asylum application and. 2. This permission grants the right to work in Estonia until the end of asylum application procedure. 3. There are no legal acts which specify that PBGB could give labour market priority to EU citizens and other legally resident third-country nationals to asylum applicants. 4. Yes, asylum applicant has no possibility to open his own self-employed business, as a whole system is ID number based. 5. No, not at the moment.
	Finland	Yes	<ol style="list-style-type: none"> 1. No. 2. Aliens Act, Section 81: Aliens who have applied for international protection have a right to gainful employment without a residence permit if they: 1) have a valid travel document that entitles them to cross the border and have stayed in the country for

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			<p>three months; or 2) have stayed in the country for six months.</p> <ol style="list-style-type: none"> 3. Yes, EU-citizens are prioritised in this matter. 4. If the asylum seeker wants to start his/her self –employed business in Finland, he/she should lodge a residence permit application for self-employed persons. Otherwise this ground for residence permit would not be taken into account in asylum process/decision. Again if the asylum seeker’s main purpose for stay in Finland is self-employment, he or she should apply self-employed person’s residence permit. 5. No.
	France	Yes	<p>1. In principle, asylum seekers are not allowed to work during the examination of their application in France. However, they can apply for a work authorisation in some limited cases.</p> <p>It should be noted that foreigners who entered France with a long-stay visa issued for asylum receive a receipt for six months, which is renewable upon the application for asylum. This receipt allows them to exercise the profession of their choice as an employee.</p> <p>2. Asylum seekers can apply for a work authorization when the French Office for the Protection of Refugees and Stateless Persons (Office français de protection des réfugiés et apatrides = OFPRA) has failed to give a ruling within one year following the registration of their application, for reasons they are not responsible for.</p> <p>The asylum seeker who has lodged an appeal before the National Court for Right of Asylum (Cour nationale du droit d’asile = CNDA) against the OFPRA’s decision rejecting his/her application, and whose receipt of application for asylum is renewed, can also apply for a work authorization.</p> <p>3. Yes. Asylum seekers’ application for work authorization is considered according to the rules of law applied to all foreign workers. According to the principle of enforceability of the employment situation, a work authorization is only issued to an asylum seeker if there is no French or European citizen or no foreign national holding already a work authorization who can be employed.</p> <p>4. Asylum seekers cannot open their own self-employed business. Foreigners who want to open their own self-employed business must hold a temporary residence permit. To be granted this permit, they have to hold a long-stay visa and have resources at least equivalent to the guaranteed minimum wage.</p> <p>5. In accordance with the new “Reception Conditions” Directive, the time limit for granting access to the labour market will be shortened from the currently applicable twelve months to nine months after the lodging of the application for asylum.</p>
	Greece	Yes	<ol style="list-style-type: none"> 1. Yes they have access to the labour market when their application for asylum is pending provided that a labour market survey has been conducted 2. According to our law (P.D. 189/1998) an asylum seeker has access to the labour market as far as a temporary work permit has been issued to him by the competent authorities that is Regional Services. According to P.D 189 / 1998, there is no specific

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			<p>deadline for the competent authorities to issue a work permit. This process is been regulated by the Administrative Procedure Code which, in general, governs the transactions between citizens and public administration and sets the period of two months within which to complete the process of issuing the work permit.</p> <ol style="list-style-type: none"> 3. Yes. A temporary work permit is been issued to a asylum seeker provided that a labor market survey has been conducted and there are no unemployed nationals, EU citizens, recognized refugees or legally resident third country nationals who are interested to work in a relevant specialty for which the work permit has been asked 4. An asylum seeker hasn't the right to open his/her own self-employed business <p>No</p>
	Hungary	Yes	<ol style="list-style-type: none"> 1. Yes (in details in 2. and 3.) 2. During the first year of asylum procedure asylum seekers are not allowed to work officially in Hungary. According to Hungarian rules, during that one year they can only work in the territory of the reception centre, but they do not need working permit for this. If one year after the admission of the application has passed and a decision has not been taken, they are granted access to the labour market under the general rules applied for foreigners. 3. Yes. The employer has to request a working permit (valid for one year, but renewable) from the local employment office. Asylum seekers can only apply for jobs which are not available for Hungarians or nationals of States parties to the Agreement on the European Economic Area. 4. No 5. No
	Italy	Yes	<ol style="list-style-type: none"> 1. The Italian legislative system, as regards access to employment for asylum seekers and refugees, refers to the content of the Legislative Decree no. 251 of 19th of November 2007. This specific decree, the text of which came into force on 19th of January 2008, implements the Directive 2004/83/EC of 29th of April 2004. Asylum seekers have access to the labour market when their application for asylum is pending for longer than six months. 2. The deadline is six months and the stay permit contains the wording "asylum request - allows access to labour pursuant to art. 11 of Legislative Decree n. 140/05". It allows to work until completion of the status recognition procedure and cannot be converted into a work permit after expiration. 3. Chapter V of the above-mentioned Decree, entitled "Content of international protection", article 25 ("Access to work") establishes that a foreign citizen in legitimate possession of a refugee and subsidiary protection status "is entitled to have the same rights of Italian citizens in the area of employment, self-employment, subscription to professional bodies, professional training and internship in the workplace." Moreover, article 25, second paragraph, recognizes the "access to public employment, with the same conditions applied to EU citizens, to whomever is granted refugee status". 4. Asylum seekers have access to employment but self-employment is only envisaged for refugees and holders of subsidiary protection. In that case, the general rules on labour market access apply (this issue is specifically covered by article 26 of the Consolidation Act on Immigration, introduced by the Legislative Decree no. 286 of July 25, 1998, and subsequent amendments). In Italy, non-EU citizens (including refugees) may exercise self-employment in the industrial, professional, craftwork and trade sector, by creating a joint-stock company, a commercial partnership or accessing to managerial position, as long as the activity itself is not reserved by law to Italian or EU citizens. In addition, the regulation establishes the same moral and professional requirements applied to self-employed Italians, including - if necessary - the prerequisites for professional bodies and

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			<p>associations. Furthermore, foreign citizens have to prove that their income is sufficient and coming from legitimate sources, that their accommodation is appropriate, and that the resources for their activity in Italy are adequate.</p> <p>Nothing to report.</p>
	Latvia	Yes	<p>1. Yes. Please see the answers below.</p> <p>2. According to the national legislation asylum seeker is entitled to start to work if the first instance (The Office of Citizenship and Migration Affairs, Ministry of Interior) hasn't taken a decision on granting /refusing of international protection status (hereafter – decision) within time frame of 1 year. According to the time limits set out in the Asylum Law the examination procedure in the first instance takes in an average of 4 or 5 months.</p> <p>3. The principle that gives priority to EU citizens and other legally resident third-country nationals in regard to access to labour market has applied to asylum seekers.</p> <p>4. According to preconditions referred to in point 1 any asylum seeker has a right to work with any employer as well as self-employed.</p> <p>5. No.</p>
	Luxembourg	Yes	<p>1./2. International protection applicants do not have access to the labour market for the first nine months after submitting their application for international protection, according to article 14 (2) of the modified Law of 5 May 2006 (Asylum Law). After, nine months, in the absence of a refusal decision of the international protection application, access becomes possible. It is important to mention that this delay in the decision must not have been generated by the applicant. The applicant can obtain a temporary authorization of occupation (AOT – “Authorisation d’occupation temporaire”). For obtaining this authorisation the applicant must present a working proposal of an employer and must have to pass the labour market test (article 14 (3)).</p> <p>3. Yes. This AOT is tied to specific conditions. It is restricted to a single profession with one single employer, and is valid for six months but can be renewed (article 14(2)). However, issuing or renewal of an AOT can be refused for different reasons linked to the evolution or organization of the labour market: e.g. the employment priority (“priorité d’embauche”) for EU citizens or third-country nationals with a residence permit inscribed at the ADEM (Administration de l’Emploi – Luxembourg employment administration) and who receive unemployment benefits (art 14(3)).</p> <p>4. No. An international protection seeker is not entitled to start his/her self-employed business. For establishing a self-employed business the person should apply for an authorization of stay as an “independent worker” fulfilling all the conditions established by article 51 (1) of the modified Law of 29 August 2008 on free movement of persons and immigration. In principle, this application has to be filed before entering the country (article 39 (1)) for not being declared inadmissible.</p> <p>5. No.</p>
	Malta	Yes	<p>1. Do asylum seekers in general have access to the labour market when their application for asylum is pending?</p> <p>Upon receiving an application from individuals seeking asylum in MT requesting access to the labour market, ETC first seeks guidance with the refugee commission to verify the status of an AS before the application for a licence is processed. In general, the Ref Com usually recommends issuing an employment licence which is valid for 6 months for asylum seekers whose application is still pending or appealed from by the Refugee Commission.</p> <p>2. What are the deadlines until an access to the labour market is granted (Art. 11 /1 of current RCD 2003/9/EC) (Art. 11/1 RCD: Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant</p>

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			<p>shall not have access to the labour market.) This is not determined by ETC since this depends on the duration the applicants for asylum remain in detention. We suggest referring this question to the Ref Com.</p> <p>3.Do you apply Art. 11/4 of the RCD? Meaning even if there is an access to the labour market do you give priority to EU citizens and other legally resident third-country nationals? (Art. 11/4 RCD: For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals)</p> <p>At present, with the exception of citizens from the EEA/Switzerland and their TCN “family members”³ or “other family members”⁴ all foreign nationals seeking to work in Malta require an employment licence. Employment licences are also needed in respect of persons who enjoy long-term residence status (in terms of Legal Notice 278 of 2006). These licences are not subject to labour market considerations. In the case of citizens from outside the EEA/Switzerland (or ‘third country national’), applications for an employment licence are subject to labour market considerations. This means that Employment licenses are not automatic, and are only granted where EEA/Swiss nationals cannot be identified for the position in question. There are many aspects to labour market consideration, including the national situation in respect of surpluses or shortages in the given occupation and sector; the employer’s history and situation in terms inter alia of recruitment and redundancy patterns; business investments; and contractual commitments. The third country national’s skill level, relevant experience and overall suitability for the position in question are also taken into account.</p> <p>Applications for third country nationals from firms that have effected redundancies in the post in question, or in similar positions to that being applied to, in the preceding twelve months will not be entertained.</p> <p>4.In case an asylum seeker wants to open his/her own self-employed business. Do the general rules on labour market access also apply? Yes. In such occasions asylum seekers apply for an employment licence in their own name rather than having an application submitted by the employer. The same procedure outlined above in Q1 and Q3 will apply.</p> <p>5.Do you currently plan any legislative or practical changes on the issue of labour market access for asylum seekers? ETC is not currently aware of any planned legislative or practical changes affecting labour market access for asylum seekers.</p>
	Netherlands	Yes	<p>1.+2. Asylumseekers have a waiting period of 6 months following the registration of their application. After that period they are allowed to work but max 24 weeks a year.</p> <p>3.Yes, EU-citizens are given priority on the Dutch labourmarket. Third Country Nationals (except certain highly skilled migrants) and asylumseekers both need a work permit.</p>

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			<p>However, a Third Country National is only granted a work permit if there is no Dutch or EU citizen available to complete the vacancy. This labourmarket-check does not apply for asylumseekers.</p> <p>4.No, an asylumseeker is not allowed to open his/her own self-employed business</p> <p>5.No, there are no plans for change of the access of asylumseekers to the Dutch labour market.</p>
	Poland	Yes	<p>1. Yes, with reservation indicated in point 2.</p> <p>2. Six months after the refugee status application is lodged by the foreigner and no decision is issued, applicant is entitled to take employment without any work permit and is entitled to register in the labour office provided he or she possesses a document issued by Chief of Office for Foreigners on the application of foreigner stating that the above situation is due to the factors that do not hinge upon an applicant. It is valid until the final decision on granting or refusing the refugee status is issued. The above mentioned document has to be accompanied by the valid temporary certificate of foreigner's identity.</p> <p>3. -</p> <p>4. No.</p> <p>5. No. As a general rule, third country citizens have an access to Polish labour market on the basis of work permits (there are many exemptions linked to factors such as legal status, nationality or type of employment). UE nationals, as a rule, enjoy free access to polish labour market.</p>
	Slovak Republic	Yes	<p>1. and 2. Following the Act on Asylum the asylum seeker must not enter any employment relation or similar labour relation or do business until the decision on granting asylum comes into effect; however, he/she shall be entitled to enter labour-law relations, if <u>no final decision</u> is made on his/her application for granting asylum <u>within one year</u> from initiation of the procedure, except for the case when the application for granting asylum was dismissed as manifestly unfounded or inadmissible.</p> <p>3. If no final decision is made on the application for granting asylum within one year from initiation of the procedure, the asylum seeker may enter labour-law relations. In this case no work permit is required and the asylum seeker has the same rights and obligations as the citizen of the Slovak Republic/EU citizen.</p> <p>4. Yes.</p> <p>5. Within the preparation of the amendment to the Act on the Stay of Foreigners also the Act on Employment Services will be amended. In</p>

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			this regard the persons with granted subsidiary protection will not need anymore a work permit to access the labour market. The amended law is planned to enter into force in May 2013.
	Slovenia	Yes	<ol style="list-style-type: none"> 1. Yes. For more see 2. and 3. 2. Nine months after the admission of the application, asylum seeker, in case that he fulfils all required conditions, are granted access to the labour market. 3. Yes. In order to take up employment, the public employment authority has to issue a working permit. The work permit is valid only for three months and could be extended until the final decision about the asylum status is taken by responsible authority. Yes, asylum seekers are treated on the same conditions as all third countries nationals and they are going through regular procedure of labour assessment. So far 10 asylum seekers granted a work permit. 4. Yes. 5. No.
	Spain	Yes	<ol style="list-style-type: none"> 1. Yes. However, see the requirements in 2. and 3. 2. Six months after the application, asylum seekers are granted access to the labour market. 3. No, six months after the application, all the asylum seekers are allowed to work in all professional sectors, without any kind of priority for EU citizens or other legally resident third country nationals. 4. Yes. Asylum seekers may start his/her self-employed business after the first six months of the application. The general rules on labour market access also apply for them. 5. There is no foreseen change in policy or administrative practice in this regard.
	Sweden	Yes	<ol style="list-style-type: none"> 1. A foreign national who has applied for asylum is allowed to work if <ul style="list-style-type: none"> -he has established his identity by means of identification documents or if he has helped the Migration Board to establish his identity as far as possible. - the case is to be considered in Sweden -his application is not obviously unfounded; i.e. it is obvious that he have no grounds for asylum and will not be granted a residence permit on other grounds. An asylum seeker can work from the beginning of the asylum process until he or she get a residence permit or until he leave the country given that he cooperates in the processes of return. 2. There is no such deadline. 3. No 4. An asylum seeker is allowed to start his/her own business. 5. Not to the best of our knowledge.
	United Kingdom	Yes	<ol style="list-style-type: none"> 1. No. Asylum seekers are not permitted to work while their claim is pending. 2. Asylum seekers are only given access to the labour market if their asylum application has been outstanding for 12 months or more, and where the delay cannot be attributed to the applicant. Access to the labour market is not provided automatically after 12 months, applicants must apply for it. In addition, their access to the labour market is restricted to jobs included in the list of shortage occupations (a list formulated and recommended to the UK Government by an independent body). They are also not allowed to

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			<p>become self-employed or set up a business.</p> <p>3. No</p> <p>4. Yes</p> <p>5. We are currently waiting the outcome of litigation on this issue and will review our policy on this issue in line with the court's decision.</p>
	Norway	Yes	<p>1. Asylum seekers have access to the labour market provided that they can document their identity, i.e. can present a valid passport. Those who are included in our fast track procedures or in the Dublin procedure do not qualify: they will not get a work permit which allow them to work.</p> <p>2. There is no deadline for access to the labour market.</p> <p>3. The Directorate of Immigration issues a work permit to the asylum seekers who qualify, see 1. above. The Directorate does not make any assessment of who to prioritize for access to the labour market.</p> <p>4. Yes</p> <p>5. No</p>
