

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

Requested by FR EMN NCP on 25 October 2010

Compilation produced on 08/12/2010

Responses from Belgium, Cyprus, Czech Republic, Estonia, Germany, Latvia, Lithuania, Netherlands, Luxembourg, Portugal, Slovak Republic, Sweden (12 in Total)

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1. Background Information

As part of the preparation of the vote of the French Ministry of Immigration budget in the Parliament (Assemblée Nationale) on **November 3rd**, the Asylum Department is very interested in gathering information on the rules of access to the labour market for asylum seekers in the Member States.

It would be very much appreciated if we could receive your answers by **October 29th at the latest.**

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2. Responses

	Query	Wider Dissemination? ¹	<ol style="list-style-type: none"> 1. Do asylum seekers have access to the labour market when their application for asylum is being processed? 2. If yes, can asylum seekers work from the beginning of the asylum procedure or is there a maximum period of prohibition to work? 3. What proportion of asylum seekers has a job? 4. Are the rules of access to the labour market different depending on the asylum procedure in process (priority procedure, normal procedure)? 5. Are these conditions the same as those set for third-country nationals or new Member States of the EU subject to a transitional period for their access to labour market?
	Belgium	Yes	<ol style="list-style-type: none"> 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. 2. Not during the first 6 months after the asylum application. (see answer on question 1) 3. We were not able to collect data on this. Also, the number of labour cards issued to asylum seekers is not the same as the number of asylum seekers actually having a job. It is not necessarily because an asylum seeker applied for a labour card, that he also has a job. 4. Those in a priority procedure (e.g. EU-citizen asylum applicants) will normally be decided within 6 months by the Commissioner General for Refugees and Stateless Persons and will as a consequence not be able to apply for a labour card. 5. 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. <p>Third -country nationals 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 labour market test is done. 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.</p> <p>After 4 years of labour in salaried employment with a labour card B one can be entitled to a labour card A. This card grants the permission to do whatever job in salaried employment for whatever employer en this is not limited in time. When the employee has such a labour card A, the employer no longer needs to apply for a separate work permit.</p>
	Cyprus	Yes	<ol style="list-style-type: none"> 1. Yes asylum seekers have access to the Labour market, 6 months after their application is lodged. 2. Six months after the application has been lodged, the asylum seeker can work in specific sectors of economy as long as he/she retains such a status, i.e. until the completion of the examination procedure and the final decision.

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			<p>3. NA</p> <p>4. No.</p> <p>5. No, asylum seekers can work at particular fields, according to an Order issued by the Minister of Interior and the Minister of Labour, but under the same conditions as third country nationals.</p>
	Czech Republic	Yes	<p>1) Yes.</p> <p>2) Asylum seekers are only allowed to take up employment after a period of 12 months after submission of application for international protection.</p> <p>3) No conclusive data available.</p> <p>4) No.</p> <p>5) No, asylum seekers are not eligible for work permit for the aforementioned period.</p>
	Estonia	Yes	<p>1) Asylum seekers in Estonia don't have 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) if:</p> <ul style="list-style-type: none"> - PBGB has not made a decision within one year since the submission of asylum application and; - the reason of this delay is not result of the asylum applicant. <p>This permission grants the right to work in Estonia until the end of asylum application procedure.</p> <p>2) See answer no 1.</p> <p>3) In our practice this permission has been issued only once.</p> <p>4) No, the rules of access to the labour market do not depend on the status of the asylum procedure.</p> <p>5) The conditions for the asylum seekers are different from those, who entered to Estonia on the basis of residence permit or visa. Further details are available in our web sites (http://www.politsei.ee/en/teenused/working-in-estonia/work-permit/).</p>
	France	Yes	<p>In France, the conditions set for asylum seekers to access to labour market, as provided in Article R.742-2 of the <i>Code for Entry and Residence of Foreign Persons and the Right of Asylum (CESEDA)</i>, are as follows:</p> <p>A foreign national who has applied for asylum is not, in principle, allowed to work.</p> <p>However, he can apply for a work authorization when the French Office for the Protection of Refugees and Stateless Persons (OFPRA) failed to give a ruling within one year following the registration of his application for asylum, for reasons the asylum seeker is not responsible for.</p> <p>His application for a work authorization is dealt with under the rules of law applicable to foreign workers. In particular, the employment situation cannot be used as an argument against recruiting a foreign national and a promise of employment or a work contract must go</p>

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			<p>with the application.</p> <p>The asylum seeker who has lodged an appeal with the National Court of Asylum (CNDA) against the decision rejecting his request through the OFPRA, and whose receipt of application for asylum is renewed, can also apply for a work authorization, which is dealt with under the rules of law applicable to foreign workers. This right is open throughout the duration of the examination of his appeal by the CNDA.</p> <p>The duration of the work authorization may not exceed however the duration of receipt of the applicant, which is of 3 months. The work authorization is renewable until the decision is taken by the OFPRA and, where applicable, the CNDA.</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.</p> <p>The French statistical system does not, at the moment, allow to know the number of temporary work authorizations issued to asylum seekers.</p>
	Germany	Yes	<p>1./ 2. During the course of the asylum procedure and after a period of residence of at least one year permission may be granted to asylum seekers to exercise an employment. However, the prerequisites for such a permission are that the persona applying for asylum does not or no longer live in a shared accommodation facility and that the Federal Employment Agency has given its consent to the employment. The Federal Employment Agency must carry out a priority check to ensure that no other persons with priority - i.e. Germans or EU citizens - can take up this offer of employment. Priority checks are to be omitted if the asylum seeker has been residing with a residence permit in the Federal Territory for a period of four years without interruption.</p> <p>3. Regarding this point there is no information available.</p> <p>4. The rules governing the access of asylum seekers to the employment market do not distinguish in accordance with the type of procedure during the course of the asylum procedure.</p> <p>5. For these groups of persons the conditions to be met to be granted access to the employment market are different.</p>
	Latvia	Yes	<p>According to our national legislation asylum seeker is entitled to start to work if the <u>first instance</u> (The Office of Citizenship and Migration Affairs, Ministry of Interior) hasn't taken a decision on granting / refusing of refugee status or subsidiary protection within time frame of 1 year.</p>
	Lithuania	Yes	<ol style="list-style-type: none"> 1. No. In Lithuania, the asylum procedure lasts for max 3 months, and in exceptional cases it can be prolonged by additional 3 months. Afterwards people granted international protection get access to the labour market. 2. n/a 3. n/a 4. n/a 5. n/a
	Luxembourg	Yes	<p>1./2. Applicants for international protection do not have access to the labour market for the first nine months after submitting their application for international protection. After nine months, in the absence of a pronounced refusal to international protection, access becomes possible. The applicant can obtain a temporary authorization of occupation (AOT- 'Autorisation d'Occupation Temporaire'). The future employer of the applicant for international protection needs to apply for it.</p>

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			<p>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. It is to be noted that the 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 Luxembourg Employment Office remains in place.</p> <p>3. There is no information available on the proportion of employed applicants for international protection.</p> <p>4. No. The Law on the right to asylum and complementary forms of protection (5 May 2006) does not differentiate between types/procedures of applicants for international protection.</p> <p>5. No. The conditions differ for applicants for international protection and third-country nationals with regards to labour market access. The conditions for applicants for international protection have been described under point 1./2.). The temporary authorization of occupation does not give right to a residence permit. The future employer needs to apply for the AOT. The procedure for third-country nationals wishing to work in Luxembourg is as follows (Please note that the French legal terms provide a clear distinction between 'permis de séjour', i.e. issued permit, and 'autorisation de séjour', pre-condition for entering the country without the actual permit, whereas the English translation of both terms, i.e. resident permit, makes the distinction less apparent): They need to apply for a temporary resident permit with prospect of employment ('autorisation de séjour temporaire en vue d'un travail salarié') before entering the country. This first residence permit is tied to a future professional activity. After arriving in Luxembourg with the authorization for residence ('autorisation de séjour en vue d'un travail salarié'), they need to declare their arrival ('déclaration d'arrivée') at the respective commune. Only after obtaining the resident permit ('titre de séjour pour travailleur salarié') can they start working. This temporary resident permit is valid for one year maximum for one single profession in one sector with all employers, while the AOT is valid for 6 months for a single profession and with one employer.</p>
	Netherlands	Yes	<p>1. Asylumseekers have a waiting period of 6 months following the registration of their application. After that period they are allowed to work.</p> <p>2. –</p> <p>3. In 2009 548 working permits were requested. In 2009 14.905 asylum applications were filed. So it is a very small percentage.</p> <p>4 & 5. There is no distinction in labourmarket access between asylumseekers and Third Country Nationals (TCN's). Asylumseekers do need a working permit just like TCN. However what differs is the period asylumseekers are allowed to work. They (asylumseekers) are permitted to work for 24 weeks, TCN's can work for a period of one year and their working permit can be prolonged after that year. For asylumseekers, although they need a working permit, no labourmarket test is required. For TCN's this test is required. This test includes an examination whether there are no Dutch or EU citizens in a position to complete the vacancy.</p>
	Portugal	Yes	<p>1. The asylum or subsidiary protection seekers to whom a provisional residence permit have been already issued, it is assured the access to the labour market, in accordance with the established in the general law. From the moment they get a remunerated job, the application of the social support scheme shall cease.</p>

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			<p>2. See previous reply.</p> <p>3. There is no consolidated data available on this point.</p> <p>4. No (except in the case of expedited procedure).</p> <p>5. Apparently, the different framework and nature of both situations (asylum seekers and labour migrants) do not allow the adoption of those kind of conditions.</p>
	Slovak Republic	Yes	<p>1. and 2.</p> <p>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. This kind of statistics is not available.</p> <p>4. No.</p> <p>5. 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>
	Sweden	Yes	<p>A foreign national who has applied for asylum is allowed to work if</p> <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. <p>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</p> <p>The Swedish statistical system does not, at the moment, allow to now the number of asylum seekers that has a job.</p> <p>The conditions mentioned above are the same for all asylum seekers.</p>
