



Ad-hoc query on asylum seekers access to labour market

Requested by EE EMN NCP on 25th April 2014

Compilation produced on 3 July 2014

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1. Background Information

Our Ministry of Interior is in the process of amending the national legislation regarding the Directive 2013/33/EU on Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast) article 15 (1) according to which Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant. Thus, we would like know how this issue is managed in other Member States.

We appreciate your answers by the **8th May 2014**.

According to our information MS provide asylum seekers access to labour market as follows:

No access to labour market: Ireland, Lithuania

Access after 12 month period: Bulgaria, Estonia, Croatia, Latvia, Malta, France, Rumania, Germany, Slovak Republic, United Kingdom



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Access provided after 9 month period: Luxemburg, Slovenia, Hungary

Within 6 month period: Belgium, Spain, Netherland, Italy, Cyprus, Poland, and Denmark








Access is provided within 0-1 month period: Greece, Portugal, and Sweden

		Wider Dissemination?¹	<ol style="list-style-type: none"> Which are the arguments why MS hasn't provide to asylum seekers shorter/automatic access to labour market? Which are the obstacles or challenges that Your MS would face, in case when asylum seekers would have automatic access to labour market? Greece, Portugal and Sweden – please share your experiences, do Your MS face any difficulties in situation whereas You have automatic access to labour market? Any challenges and good practises?
	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	<ol style="list-style-type: none"> Since 12 January 2010 asylum seekers are allowed to work after 6 months in the asylum procedure, if they have received no negative first instance decision within these 6 months after applying for asylum. After this waiting period of 6 months they can obtain a labour card C that allows them to work for an employer of their choice, as long as there is no final negative outcome regarding the asylum application. The 6 month waiting period was a compromise between the 12 month waiting period foreseen in the Reception Conditions Directive and immediate access to the labour market. The main reason not to provide immediate access to the labour market lies in the risk that the asylum procedure could be used to elude labour migration procedures for third country nationals and the labour market test. (A third country national can in principle only be granted a labour card if the employer can demonstrate that no appropriate candidate could be found in Belgium or the European Union; moreover a labour card B for labour migrants from third countries only allows to work for a specific employer.) <p>Today most asylum applicants receive a first instance decision within 6 months after their asylum application was submitted. This implies that the number of asylum seekers having de facto access to the labour market is limited.</p> <ol style="list-style-type: none"> <ul style="list-style-type: none"> Misuse of the asylum procedure by labour migrants (see answer to question 1) Exploitation of asylum seekers by non-bona fide employers, slum landlords or human traffickers No point of engaging asylum seekers and employers if the duration of employment is too short (short average length of the asylum procedure and an uncertain outcome) Unfair competition towards national employees (especially for low-skilled jobs)

¹ 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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	Bulgaria	Yes	-
	Cyprus	Yes	-
	Czech Republic	No	This EMN NCP has provided a response to the requesting EMN NCP. However, they have requested that it is not disseminated further.
	Denmark	Yes	-
	Estonia	Yes	<p>According to Act on granting international protection to aliens an asylum seeker may take employment in Estonia if the Police and Border Guard Board have not made a decision on his or her application for asylum within one year as of the submission of the application for asylum due to reasons beyond the asylum seeker's control. The new amendments of above mentioned law will ensure asylum seekers access to labour market within 9 month period, the access will be guaranteed also at the time of appealing the asylum decision (there is no such provisions at the moment).</p> <p>The reason of amending our legislation is to provide common standards to asylum seekers within MS and to avoid situation that asylum seekers would move from MS to MS to find more convenient access to labour market.</p> <p>2. The reason why we ensure to asylum seekers maximum period set in Recast is to avoid situation, while access to labour market would be pull factor to groundless asylum applications.</p> <p>3. Not applicable.</p>
	Finland	Yes	<p>1. According to section 81§ of the Alien's Act, an asylum seeker may take up employment after a period of three months after the person has submitted his/her asylum application, if the person is in the possession of a valid travel document which meets the requirements of Section 11§ art. 1. If the asylum seeker does not have a valid travel document according to the above-mentioned requirements, the period before he/she may take up employment is six months after submitting an asylum application.</p> <p>Previously, the time period was three months for all asylum seekers; the legislation was amended and entered into force in 2010. The main reasoning was to pre-empt unfounded asylum claims, which could have resulted from the 3-month period being considered a pull-factor for coming for reasons of work instead of international protection. Another reason was the aim to have a larger number of the asylum seekers to present their possible travel documents, when submitting their asylum application, in order to make the asylum process faster and more efficient, with the reward for the asylum seeker being an earlier entry to the labour market.</p> <p>2. See Q 1; possible risk for more unfounded asylum claims, as immediate access to the labor market could be considered a pull-factor.</p> <p>3. N/a</p>
	France	Yes	<p>1) By the Prime Minister's circular of 26 September 1991 and in response to the growing migratory pressure, France decided to modify the provisions of the circular of 17 May 1985 which automatically granted asylum seekers a work permit as soon as the application had been lodged.</p> <p>2) Immediate access to the labor market for asylum seekers was not considered by French authorities during the national consultation on the asylum reform, as France is facing a high level of unemployment which notably affects the less qualified and the most vulnerable</p>






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			persons. The line taken by French authorities aims at reducing time limit for the examination of an asylum application. Besides, French government will implement provisions of the new reception conditions directive which shorten the time limit for granting access to the labor market from the currently applicable twelve months to at the latest, nine months after the lodging of the application.
	Germany	Yes	<p>As from 6 September 2013, the waiting period for asylum seekers with regard to access to the labour market has been reduced from 12 months to 9 months. Additionally, the Federal Government has started the legislative process for legislation that provides for an again reduced waiting period of only 3 months. It has adopted a resolution to that effect on 30 April 2014.</p> <p>1. and 2.: Waiting periods for access to the labour market seek balance between the desire for integration and the desire to reduce social welfare expenses on the one hand and the problem of creating unwanted incentives for persons that apply for asylum in Germany merely out of non-asylum-related but purely economic reasons on the other hand. It is assumed that the shorter the waiting period is the stronger the potential “pull-effect” may be.</p>
	Greece	Yes	<p>1. According to the current legal framework, asylum seekers have access to the labour market immediately after the registration of their claim. A valid international protection applicant's card is the only requirement for the applicant to seek employment through a temporary work permit. Access to the labour market is subject to the condition of existing employment supply for the position in question (i.e. Greek/EU citizens and beneficiaries of international protection / see below n. 3). A new legislative proposal is foreseen for the purpose to regulate access to the labour market with regard to the above mentioned restriction.</p> <p>2. A key challenge that a member-state that gives asylum seekers direct access to the labor market may face is the negative impact this can have on labor market actors such as unemployment rate and the smooth distribution of jobs between the domestic human resources and the asylum seekers.</p> <p>3. No problems encountered because of the process we follow on this issue (Presidential Decree 189/1998). According to this, a temporary work permit is been issued to an asylum seeker provided that a labor market survey has been conducted and there are no unemployed Greeks, EU citizens, recognized refugees or legally resident third country nationals who are interested to work in the field and specialization for which the work permit has been applied for. The main objective of this procedure is to ensure that there has been no manifested interest to cover such a job by the domestic workforce and thereby, to mitigate any adverse impact that may have the entry of asylum seekers in the labor market.</p>
	Hungary	Yes	<p>In the transposition process of Directive 2013/33/EU, Hungary chose not to provide immediate access to the labour market to asylum seekers following the submission of their asylum application, but after 9 month period for the following reasons:</p> <ul style="list-style-type: none"> -asylum seekers legally staying in the territory of Hungary are in an uncertain situation (considering that their asylum application may be refused then they have to leave the country) -Hungary is subject to increasing (irregular) migratory pressure, therefore, the provision of immediate access to the labour market might constitute a significant pull factor which would probably enhance the number of abuses of asylum procedures -Hungary faces high unemployment rate which affect more the less qualified; therefore, asylum seekers lacking Hungarian knowledge and acknowledged qualification have limited employment opportunities <p>Nevertheless, asylum seekers staying in reception centres (majority of asylum seekers) are entitled to work in the territory of the reception</p>




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			centre after the submission of the asylum application, prior to the 9 months period.
	Ireland	Yes	-
	Italy	Yes	<p>In Italy, the Legislative Decree No. 140/2005 states that if the asylum procedure is not completed within six months, the stay permit is renewed for another six months and the asylum-seeker is allowed to work (art. 11). Such renewed permit of stay allows the asylum seeker to carry out a work activity until termination of the procedure of review of the asylum seeker's application.</p> <p>It must be noted that Italy has transposed the provision of the EU Reception Directive 2003/33/EU, of 26 June 2003, concerning the right to work of asylum-seekers more favorably than the minimum standards required by the Directive. In particular, the Directive affirms that "Member States shall ensure that applicants have access to the labour market no later than 9 months from the date when the application for international protection was lodged if a first instance decision by the competent authority has not been taken and the delay cannot be attributed to the applicant", and that they "shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national law, while ensuring that applicants have effective access to the labour market" (art. 15).</p> <p>The reasons for this decision to attend six months concerning two issues:</p> <ol style="list-style-type: none"> 1. the asylum seeker will benefit of the reception measures inside specific centres and since he/she starts to stay there. In order to benefit of the reception measures, the asylum seeker must show the lack of sufficient means for her/his life and that of her/his family. The amount under which the protection is granted is established with the reference to a period of maximum six months and taking as measure the amount requested to get the permit of stay for tourism; 2. the Tribunal shall issue a judgment within three months from the submission of the appeal, based on both facts and points of law (Article 35 (10) of the Legislative Decree 25/2008). It can either reject the appeal or grant international protection to the asylum seeker. However it generally takes six months between the date when the appeal is lodged and the date when the judgment is issued.
	Latvia	Yes	<ol style="list-style-type: none"> 1. According to the amendments in the Immigration Law, since 1 January 2014 asylum seeker has access to the labour market 9 months after he/she has submitted an asylum application if decision in the first instance (the Office of Citizenship and Migration Affairs) hasn't been taken. This right maintains until the time when the final decision regarding his/her application has come into effect and become non-disputable. 2. Immediate free access to the labour market can trigger asylum flows due to the employment problems in the countries of origin. During the adoption of amendments to the Immigration Law there were no discussions on possibility to foresee faster access to the labour market for asylum seekers. 3. N/A
	Lithuania	Yes	<ol style="list-style-type: none"> 1. The Directive 2013/33/EU has not been transposed into national law yet. According to the national law, application for asylum has to be examined within 3 months (the period can be extended to 6 months if there are objective reasons). If asylum seeker is granted international protection, he/she can have access to the labor market. In other way, asylum seeker has to leave the country. Current legislation corresponds to the requirements of the Directive. 2. Giving immediate access to the labor market could increase the volume of unfounded asylum applications. 3. N/A
	Luxembourg	Yes	<ol style="list-style-type: none"> 1. Article 14 of the Law of 5 May 2006 (Asylum Law) transposed into national law article 11 of the Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers. According to this article an international protection applicant can have access to the labour market after a period of nine months following the filing of the application. S/he can be granted a






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			<p>temporary occupation authorization (AOT) that is not the equivalent of a working permit.</p> <p>According to the commentary of this article (see bill n° 5437) the applicant cannot have access to the labour market except if the duration of the procedure becomes extremely long. The intention of legislator was that granting the AOT will not give right to a residence permit, to the extent that the income that the international protection applicant will earn are not considered as personal sufficient resources in the sense of the immigration law in regards with the entry and stay of foreigners. The main reason is that the Government wanted to clearly distinguish between the international protection and immigration in order to avoid the situation where an international protection application would be used as an indirect way to access to labour market.</p> <p>It is important to mention that the AOT can be refused taking into consideration the «Community Preference rule » which applies in the case of EU and EEA nationals or in the case of TCN legally residing in the territory and who are collecting unemployment benefits.</p> <p>2.N/A 3.N/A</p>
	Malta	Yes	<p>1. Malta gives asylum seekers access to the labour market after a period of 12 months, in conformity with the current Reception Conditions Directive. Such a timeframe is deemed reasonable, particularly when considering that asylum seekers in need have access to free accommodation and other services.</p> <p>2. It is considered that access should not be given immediately in order not to encourage the filing of applications by persons who are not genuinely in need of international protection.</p> <p>3. N/A</p>
	Netherlands	Yes	<p>0. Indeed in the Netherlands asylum seekers are allowed to work after six months during 24 weeks out of 12 months.</p> <p>1. Explain the reasons your MS has chosen not to give asylum seekers immediate access to the labour market after they have lodged an asylum application? We want to avoid the situation, where access to the labour market would be a pull factor to lodge unfounded asylum applications for the sole purpose of access to paid work. Therefore the limited period of 24 weeks out of 12 months after the first six months has been chosen.</p> <p>2. What might be the possible challenges if giving immediate access to the labour market? Besides the above mentioned pull factor for lodging more asylum applications, rights from the insurance against unemployment would cause problems. If the asylum seeker started to work immediately and his contract would be ended after 26 weeks, he would be entitled to receive money out of the unemployment insurance. And the insurances would also be a pull factor to come to the Netherlands.</p> <p>3. Not applicable</p>
	Poland	Yes	<p>1. The lack of an immediate access of asylum seekers to the labour market derives from the assumption that the asylum seekers' motivation to leave the country is of non-economic character. Time limit for issuing a decision to grant or refuse the refugee status is 6 months. It can be however prolonged under specific circumstances. If issuance of the decision is delayed for the reasons beyond the foreigner's control, after 6 months since the application has been submitted the foreigner is granted a special certificate which entitles him/her to access the labour market (without the need to hold a work permit). The possibility to work has been introduced in view of</p>




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			<p>enhancing future integration perspectives and improving the mental (and financial) well-being of an applicant.</p> <p>2. It could result in increasing number of unfounded asylum applications lodged by persons who are in fact economic migrants. As being granted a work permit in Poland requires finding an employer and (in many cases) conducting labour market test (even if the result of the labour market test is positive, the decision on granting visa for the purpose of work could result in being negative one), applying for asylum could turn out to be a convenient way of circumventing obstacles in order to access the labour market. Difficulties in determining the identity of an asylum seeker as well as obtaining the documents certifying professional qualifications may also pose a challenge in the context of an immediate access to the labour market.</p>
	Portugal	Yes	<p>1. According to the new PT asylum Law, asylum seekers will have access to the labour market within 30 working days from the moment the claim is lodged, which is the first decision on admissibility procedure. PT thinks that allowing asylum seekers in the EU has the sole purpose of examining the application of asylum and not their integration in the labour market which could be a pull factor.</p> <p>2. Giving immediate access to the labour market would be a pull factor to unfounded asylum applications and to secondary movements in MS.</p> <p>3. PT hasn't faced any particular difficulty. PT believes that the solution to prevent access to the labour market will become a pull factor lies in the rapid analysis of the process and in the other way is also a discouragement to illegal work.</p>
	Romania	Yes	<p>The issues connected to the access of asylum seekers to the labour market are provided for by Law no. 122/2006 on asylum in Romania. Thus, the asylum seeker has the right to access the labour market in the same conditions as for Romanian citizens, after one year from the application date if he/she is still in the procedure for determination of one of forms of protection [art. 17 para. (1) letter o)]. The legal provision was included into national legislation in 2006 and it is in line with Council Directive 2003/9/EC which was applicable until the approval of the Directive 2013/33/EU (recast). Setting the one year period was caused by the wish to avoid the situations when granting immediate or short time access to labour market after the date of application would be a pull factor for unfounded applications. Romania is in the process of transposing the provisions of the Directive 2013/33/EU (recast) – deadline for transposition in 2015.</p>
	Slovak Republic	Yes	<p>According to the current regulation of the Act n.480/2002 on Asylum and Amendments of Some Acts, an asylum seeker may take up employment if the Bureau of Border and Alien Police has not made a decision on his or her application for asylum within one year as of the submission of the application for asylum due to reasons beyond the asylum seeker's control. Currently, an amendment to this act has been considered which would shorten the period to 9 months.</p> <p>1. Facilitating access to the labour market for irregular economic migrants who often submit abusive applications for asylum in the Slovak Republic would discriminate those migrants who enter the labour market based on meeting the legal requirements for granting residence permit for the purpose of employment.</p> <p>2. Facilitating access to the labour market right after the submission of the application for international protection could lead to an increasing number of irregular migrants and an increasing number of asylum seekers who actually seek employment. Due to this fact abusive applications for international protection would be submitted aiming at relatively fast access to the labour market.</p> <p>3. N.A.</p>
	Slovenia	Yes	-
	Spain	Yes	-

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	Sweden	Yes	<p>In Sweden asylum seekers are allowed immediate access to the labour market. The reason for this is that it is considered an advantage to be occupied and to be able to support oneself, fully or at least partly, while waiting for the asylum decision. If the asylum seeker has worked while awaiting the asylum decision and the application is refused he/she can instead apply for a residence permit based on employment if he/she has received an offer from the employer to continue working in Sweden. This which is considered a good practice for all the concerned parties. No major disadvantages or challenges have been discussed.</p>
	United Kingdom	Yes	<p>1.Asylum seekers are not permitted to work while their claim is pending. 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).</p> <p>This right will cease if an asylum seeker’s application for asylum is finally determined as unsuccessful. Asylum seekers may not become self-employed or set up a business, however they may undertake voluntary activity for a registered charity or voluntary organisation, but this activity must not amount to unpaid employment or payment in kind.</p> <p>2. It is important to maintain the distinction between those in need of international protection and those seeking to work in the United Kingdom. Allowing asylum seekers the opportunity to seek paid employment while their case awaits determination is likely to encourage those motivated primarily by economic reasons and who are not genuinely in need of protection to make an unfounded asylum claim. This would slow down the processing of applications made by those with a genuine need of protection and undermine the integrity of both the managed migration system and the asylum system.</p> <p>Our policy is to consider applications for permission to work for those whose claims (or further submissions following an earlier rejection) have been outstanding for 12 months or more, providing the delay cannot be attributed to them. This is consistent with the EU reception conditions directive, which sets out the minimum benefits and entitlements afforded to asylum seekers while they await a decision on their claim.</p> <p>3.Not applicable</p>
	Norway	Yes	<ul style="list-style-type: none"> - Explain the reasons you MS has chosen not to give asylum seekers immediate access to the labor market after they have lodged an asylum application? - What might be the possible challenges if giving immediate access to the labor market? <p>Since Norway is not a member of the EU, the mentioned Directive, 2013/33/EU, has not entered into force yet in Norway.</p> <p>However, such standards as referred to in Art 15 in the Directive, are already partly covered in the Norwegian Aliens Act Sect. 94, although certain conditions have to have been met by the applicant, namely,</p> <ul style="list-style-type: none"> - An Asylum interview with the applicant has taken place. - There is no doubt concerning the identity of the applicant, and

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			<p>- There is no information in the case concerning a possibility of taking the applicant back to another country</p> <p>Subsequently, it can take some time before the applicant can get access to the labour market. Notably, since there is an Identity condition (applicant has to be able to prove their identity), and very few applicants are able to identify themselves sufficiently, our experience is that only a small number actually receive a permit to work in Norway prior to receiving an answer to their application.</p> <p>There are a number of reasons why Norwegian authorities have stipulated these conditions. Amongst these, it is in our interest that applicants liable for a refusal, should not receive benefits to facilitate their integration process into Norway. Furthermore, it is hoped that the possibility of obtaining a work permit will provide an incentive for applicants to produce valid identity documents.</p>
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