



## **EMN Ad-Hoc Query on Access of applicants for a residence card of a family member of a Union citizen to the labour market**

Requested by Ludmila TOUŠKOVÁ on 1st August 2018

### **Miscellaneous**

Responses from Austria, Belgium, Croatia, Cyprus, Czech Republic, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Slovak Republic, Sweden, United Kingdom (20 in total)

#### Disclaimer:

*The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.*

### **Background information:**

On the basis of the Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, third-country nationals who are family members of the Union citizens and want to take up employment in the Czech Republic are treated equally to Czech nationals and have free access to the labour market. The Czech Republic applies the provisions of the Directive to family members of its own citizens as well.




Family members of the Union/Czech citizens are allowed to take up employment as soon as they submit an application for a "residence card of a family member of a Union citizen" and receive a certificate of application for the residence card granted according to the Article 10 of the Directive. However, our experience shows that employers often hesitate to employ a family member of a Union/Czech citizen holding a certificate and waiting for the decision on his/her application which is taken by the Ministry of the Interior. They are uncertain about foreigner's status and free access to the labour market and they prefer not to take a risk (and face potential penalty for illegal employment). The average processing time is 5 months and ¼ of applications are rejected. Since the employer is not a party to a proceeding on the application for a residence card, the Ministry of the Interior and other authorities are not allowed to answer to employer's requests for information on foreigner's status or the progress and the result of the proceeding (unless the power of the attorney is granted to the employer by the foreigner).




In order to explore the practice and experience of other Member States, we kindly ask you to answer the following questions:




### **Questions**




1. **Does your Member State let applicants for the residence card take up employment freely before their applications are assessed? Yes / No**
2. **If yes to Q1. does your Member State issue any kind of document explicitly proving free access of a family member of a Union citizen to the labour market before he/she obtains a residence card? Yes / No**
3. **If no to Q2, do you encounter any practical obstacles to access of family members of Union citizens to employment similar to those described above? Yes /No**
4. **If yes to Q3, please briefly describe your experience.**



### **Responses**



	Country	Wider Dissemination	Response
	Austria	Yes	<p><b>1.</b> Yes. The Act Governing the Employment of Foreigners regulates the employment of foreigners. Excluded from this law are foreigners who enjoy freedom of movement of workers on grounds of a legal act of the European Union (Art. 1, para. 2 lit I). This also includes third country nationals, who are family members of EEA citizens enjoying freedom of movement (Art. 54 Settlement and Residence Act). This means, in principle, that these family members have access to the labour market before a residence card is issued.</p> <p><b>2.</b> Yes. According to Art. 3 para. 8 Act Governing the Employment of Foreigners, on request of foreigners exempt from the Act Governing the Employment of Foreigners, the Public Employment Service issues a written confirmation of the exemption.</p> <p><b>3.</b> N/A</p> <p><b>4.</b> N/A</p>
	Belgium	Yes	<p><b>1.</b> Yes. Foreign nationals who have applied for family reunification with a Belgian citizen or an EU citizen do not have to obtain a work permit, and can therefore freely access the labour market.</p> <p><b>2.</b> No. These foreign nationals receive a certificate of registration and an Annex 19ter which proves that they have applied for family reunification. The combination of these two documents allows them to access the labour market, but this is not explicitly mentioned on the documents.</p> <p><b>3.</b> No information.</p> <p><b>4.</b> N/A</p>
	Croatia	Yes	<b>1.</b> 1.Yes

			<p>2. 2. No</p> <p>3. 3. No</p> <p>4. 4. N/A</p>
	Cyprus	Yes	<p>1. Yes, but only spouses and parents of Cypriots are the family members who are eligible for employment and have free access to labor.</p> <p>2. Not exactly. The Cypriot Government issues, for family members, residence cards which indicate the status of the holder as "cy employment" in case of employment or "cy visitor" if the holder is not working.</p> <p>3. One common problem encountered by family members of Cypriots, is that the employers hesitate to employ a family member, when the family member is not already a holder of a "cy employment card". However, the Civil Registry and Migration Department cannot issue the aforementioned residence card, if a relevant declaration of the employer or a registration at the Social insurances of the Ministry of Labour is not presented by the family member.</p> <p>4. Our experience as described above, involves queries from both sides which are answered either verbally or in writing, in the form of official correspondence</p>
	Czech Republic	Yes	<p>1. Yes</p> <p>2. No</p> <p>3. Yes, see above.</p> <p>4. See above.</p>
	Finland	Yes	<p>1. Yes</p>


			<p>2. No</p> <p>3. N/a</p> <p>4. N/a</p>
	France	Yes	<p>1. YES</p> <p>2. Yes when all the documents necessary for the examination of the request have been presented by the foreign national to the Prefecture, authority competent for processing such applications.</p> <p>3. N/A</p> <p>4. N/A</p>
	Germany	Yes	<p>1. Yes.</p> <p>2. No.</p> <p>3. No. Family members entitled to free movement who are not EU citizens will be issued with a residence card within six months of providing the necessary information on the conditions for free movement. However, the data subject shall immediately receive a certificate stating that the necessary information has been provided. This certificate and the residence card issued afterwards enables the person concerned, if necessary, to prove to an employer that he/she is not subject to the regulations of the Residence Act and does not require a residence permit entitling him/her to gainful employment.</p> <p>4. n/a</p>
	Greece	Yes	<p>1. Yes</p> <p>2. Yes</p>



			<p><b>3.</b> No. If requested, the person can present the document certifying that they have lodged an application for a residence card.</p> <p><b>4.</b> No. If requested, the person can present the document certifying that they have lodged an application for a residence card.</p> <p><b>5.</b> n/a</p> <p><b>6.</b> No</p> <p><b>7.</b> n/a</p> <p><b>8.</b> n/a</p>
	Hungary	Yes	<p><b>1.</b> Yes</p> <p><b>2.</b> No</p> <p><b>3.</b> No, we do not encounter any practical obstacles. When a family member of a Hungarian/EU/EEA citizen applies for a residence card, he receives a certificate that proves the fact that they applied for the status.</p> <p><b>4.</b> N/A</p>
	Ireland	No	
	Italy	Yes	<p><b>1.</b> No. Applicants for the residence card of a family member of a EU citizen are allowed to take up employment only as a result of a positive assessment of their application. Specific provisions concerning third-country nationals who are family members of EU citizens are provided by the Legislative Decree n. 30/2007</p> <p>(<a href="http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneG">http://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneG</a></p>

			<p>azzetta=2007-03-27&amp;atto.codiceRedazionale=007G0033&amp;elenco30giorni=false)</p> <p>2. n/a</p> <p>3. n/a</p> <p>4. n/a</p>
	Latvia	Yes	<p>1. 1.No. Review of documents submitted for requesting of a residence permit for family member of an EU/EEA citizen is completed within 30 days.</p> <p>2. -</p> <p>3. -</p> <p>4. -</p>
	Lithuania	Yes	<p>1. Yes. According to the Law on the legal status of the Aliens, an alien intending to work under labour contract shall receive a permission to work unless he or she is exempted from the obligation to obtain a work permit. The exemptions stated in the Law are as follows: a) An alien can conclude a labour contract and start to work before receiving residence permit if he intends to take up highly qualified employment and fulfils other conditions; b) An alien can start to work before receiving residence permit if he has been admitted to Lithuania in the framework of an intra-corporate transfer; c) An alien can conclude a labour contract and start to work if he intends to carry activities in the field of installation of new technologies or other significant innovations which importance is approved by the ministry of Economy; d) An alien intends to take up employment as a teacher and/or conduct research and/or experimental (social, cultural) development as a researcher under the employment contract concluded with a higher education and research institution registered in the Republic of Lithuania; e) An alien has acquired the long-term resident status in another EU Member State and is in possession of the residence permit issued by that state; f) An alien starts to work after graduation from the high school and this alien has a residence permission as a student; g) The Lithuanian Labour Exchange under the Ministry of Social Security and Labour takes a decision that the</p>

			<p>alien's employment meets the needs of the labour market of the Republic of Lithuania.</p> <p>2. N/A</p> <p>3. N/A</p> <p>4. N/A</p>
	Luxembourg	Yes	<p>1. Yes. The family member of an EU/EEA citizen has to apply for a residence card as a family member of an EU/EEA citizen. The moment that the individual files the application, s/he receives a copy of the application with a stamp that it was filed. The document states that it is issued as a receipt and is valid as a residence card for a maximum period of six months (deadline in which the residence card is going to be issued). This document allows access to the labour market.</p> <p>2. No. Third-country nationals, family members of a Luxembourgish national or an EU/EEA citizen can work without previously obtaining a working permit and without restrictions of economic sector or profession (except the profession which requires the exercise of public force) in accordance with article 22 paragraph 1 of the amended law of 29 August 2008 on free movement of persons and immigration.</p> <p>3. No. Generally, the issuance of the residence card takes less than six months. The employer can hire the person and if the individual does not present the residence card at the expiration of the six months mentioned in the document (copy of the application) the labour contract is rescinded automatically without any responsibility for the employer. The main problems that the TCN can have are related to qualifications or language as in Luxembourg there are three official languages (Luxembourgish, German and French) and one lingua franca (English).</p> <p>4. N/A.</p>
	Malta	Yes	<p>1. Yes Article 25 of Directive 2004/38 refers as regards such an approach.</p> <p>2. No Workers in Malta, whether they are Maltese or Foreigners, are required to register their employment with the Public Employment Services. Hence on such registration they would demand proof that the said</p>



			<p>family members are entitled to such access to employment by other means than the presentation of the said residence - this is in accordance with article 25 of the Dir 2004/38.</p> <p><b>3.</b> YES/No If the authorities become aware of any such obstacles on behalf of employers the responsible authorities provide the relative information</p> <p><b>4.</b> See reply to previous question.</p>
	Netherlands	Yes	<p><b>1.</b> Yes. When a third-country national family member of an EU-citizen wishes to reside with the EU-citizen in the Netherlands, the family member can apply for verification against EU Law at the Dutch Immigration- and Naturalisation Service (IND). Immediately after submitting the application, a sticker with ‘community citizen’ mentioning ‘arbeid toegestaan (work allowed)’ is placed in the passport of the family member, unless the family relation between the EU-citizen and the third-country family member has not been proven. On the basis of this sticker the third-country family member is allowed to work in the Netherlands during the period in which the application for verification against EU Law is in process.</p> <p><b>2.</b> Yes, a sticker with ‘community citizen’ mentioning ‘arbeid toegestaan (work allowed)’ is placed in the passport of the third-country family member.</p> <p><b>3.</b> -</p> <p><b>4.</b> -</p>
	Slovak Republic	Yes	<p><b>1.</b> In the Slovak Republic a right to stay of a family member of a Union citizen is automatically derived from the law. S/he is entitled to stay in the territory of the SR up to three months from the entry if having a valid passport. After three months the right to stay is maintained and can be proved by using a valid ‘residence card of a family member of a Union citizen’ or other reliable document. On the day application for issuing the residence card was submitted a Police Unit issues a confirmation of submitting the application to the family member of a Union citizen. The residence card is issued within 30 days. There is no authorisation procedure in these cases. Employment of Union citizens in the SR is implemented in line with the Regulation 1612/68 on freedom of movement for workers within the Community. This right to free</p>

			<p>movement and right to entry and work in another MS includes family members as well. EU citizen, his/her family members and TCNs having a residence of TCN in the SR who has a status of a long-term resident in the EU have the same legal status in labour relations as Slovak citizens (in line with the Act on employment services). At the same time, employment of a TCN who is not an EU citizens and is a family member of an EU citizen is subjected to reporting obligations of the employer, using a prescribed form “information card”. Before employing this citizen, employer has to check the document proving family relationship with the Union citizen. Such document is the residence permit in the SR or passport and a document proving the existence of the relationship to the EU citizen in line with Act on residence of aliens.</p> <p><b>2.</b> No. No specific document proving the free access of the citizens of EU and their family members to labour market is issued. The information on employment of the TCN (family member of EU citizen) is submitted by the employer on a standardized form (see Q1).</p> <p><b>3.</b> No, the SR has no such experience. If the EU citizen does not utilise his/her right to stay in the territory of the SR and does not register for the stay, then the offices approach the family member as any other TCN. In such case the work permit is required.</p> <p><b>4.</b> See Q1.</p>
	Sweden	Yes	<p><b>1.</b> Yes</p> <p><b>2.</b> No</p> <p><b>3.</b> Not to the best of our knowledge.</p> <p><b>4.</b> NA</p>
	United Kingdom	Yes	<p><b>1.</b> Yes</p> <p><b>2.</b> Yes – A certificate of application issued which is issued once a valid application form has been received and biometric details of the applicant have been enrolled.</p>

			<b>3. N/A</b> <b>4. N/A</b>
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