



**COUNCIL OF
THE EUROPEAN UNION**

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ASILE 2

PRESIDENCY NOTE

To : Strategic Committee on Immigration, Frontiers and Asylum

dated : 28 and 29 January 2002

No. Cion prop. : 9074/01 ASILE 29 + COR 1 (fr)

Subject : Proposal for a Council Directive laying down minimum standards for the reception of applicants for asylum in Member States
- Access to work and vocational training of applicants for asylum

1. In accordance with Article 63(1)b) TEC and the Tampere European Council conclusions of 15 and 16 October 1999, the Council's bodies have, over the past years, endeavoured to define common minimum standards for the reception of applicants for asylum in Member States.

The JHA Council, at its meeting on 30 November and 1 December 2000, adopted conclusions on this matter (cf. 13117/1/00 ASILE 52 REV 1).

In May 2001¹, the Commission forwarded a proposal for a Council Directive laying down minimum standards on the reception for applicants for asylum in Member States.

2. Since then, the Asylum Working Party has met on several occasions to examine the Commission proposal. Although many difficulties remain at this level one issue in particular was considered as being political in nature and the Working Party agreed to submit it to the Strategic Committee : the possible access of asylum seekers to the labour market.

In point 6 of the guidelines annexed to the above-mentioned Council conclusions, it is indicated that "the future Community instrument should result in the harmonisation for conditions in which asylum seekers may work". However, the Council left open the question of whether there should be a general ban on access to employment (to avoid the filing of applications solely for economic purposes), completely free access to employment or possible access to employment subject to one or more conditions.

In its proposal (Article 13), the Commission has proposed as a minimum standard that Member States shall not forbid applicants for asylum to have access to the labour market for more than six months after they have lodged their application.

3. From discussions in the Working Party it became apparent that no agreement was forthcoming on this issue at this stage. The Presidency therefore, at the Working Party meeting on 15 and 16 January 2002 submitted certain questions to delegations with a view to obtaining a better picture of the current situation in Member States.

¹ 9074/01 ASILE 29.

It is recalled that in accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the treaty on European Union and to the treaty establishing the European Community, Denmark is not participating in the adoption of this proposal and is therefore not bound by it nor subject to its application.

In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the treaty on European Union and to the treaty establishing the European Community, the United Kingdom gave notice, by letter of 27 September 2000, of its wish to take part in the adoption and application of this proposal.

Pursuant to Article 1 of the said Protocol, Ireland is not participating in the adoption of this proposal. Consequently and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this proposal do not apply to Ireland.

The outcome of this exercise may be summarised as follows :

a) Authorisation or ban on access to work

- Some Member States (DK, IRL, I, L) do not authorise asylum seekers to work while their refugee status is still being determined.
- One Member State (F), while it establishes a general ban on access to employment, may allow an authorisation in very rare cases.

b) Moment from which an authorisation to work is granted

- One Member State (EL) authorises asylum seekers to work from the moment the application is submitted.
- Several Member States grant access to work after a specific period of time following the lodging of an application :
 - = B and P : once the admissibility procedure has been exhausted;
 - = FIN : after 3 months;
 - = S : after 4 months;
 - = E, NL and UK : after 6 months;
 - = D : after one year.

c) Restrictions to access to work

- **Time :**
 - = B, E, P and UK : access to work until a decision granting or denying refugee status has been taken (in P, an extension may be obtained when an appeal with suspensive effect is introduced);
 - = FIN and S : access to work until an expulsion decision has been taken;
 - = EL : authorisation to work ends thirty days after residence permit expires;
 - = NL : access to work limited to 12 weeks per year.

- **Location :**
 - = D and A : geographical restrictions linked to the residence of the seekers, in order to avoid any delay on the asylum procedure;
 - = D, EL and A : limitations linked to priority given to EU citizens and citizens of States bound by the Agreement on the European Economic Area and also to legally resident third country nationals who receive unemployment benefit;
 - = EL : access also limited to seekers who are not accommodated in a collective centre;
 - = E : some geographical restrictions linked to the place of work.

- **Business sectors :**
 - = B and E : only as employee (ban on access to self-employed activities);
 - = NL : only to agriculture and catering sectors. In principle, only as employee. A specific authorisation is needed for self-employed activities.

4. In this situation, and given the fact that as stated above, the Council established in its conclusions that the future Community instrument should result in the harmonisation of conditions in which asylum seekers may work, the **Presidency** considers that the following text for an Article 13 of the future Directive on reception conditions of asylum seekers could be considered as a basis for a compromise on this subject :

"Article 13

- 1. Member States may authorise applicants for asylum to have access to the labour market only after the expiration of a period of six months from the date on which their application has been lodged.**

- 2. Conditions for access to the labour market shall be laid down by Member States. For reasons of labour market policies, Member States may give priority to EU nationals and nationals of States bound by the Agreement on the European Economic Area and also to legally resident third country nationals."**

5. With regard to access to vocational training to be provided for asylum applicants as proposed in Article 14 of the Directive, the problems stem from the fact that in the proposed text vocational training is linked exclusively to work. On the other hand, the conclusion emerged from the Working Party's discussions that it should not be related to the effective exercise of a job, but that access could be provided irrespective of that possibility in order to offer asylum applicants qualifications which would be useful to them in their countries of origin, as covered by the Community initiative EQUAL, which enables the co-financing of this type of education and training programme.
6. However, insofar as vocational training and the effective exercise of a job could continue to be linked, in which case the questions raised concerning access to the labour market have a bearing on this point, it was considered appropriate that the SCIFA should also state its views on Article 14.
7. The Presidency accordingly submits to the SCIFA for consideration the following text for Article 14 of the future Directive laying down minimum standards for the reception of applicants for asylum:

**“Article 14
Vocational training**

Member States shall allow applicants for asylum access to vocational training irrespective of whether the applicant has access to the labour market.

Member States may lay down the conditions of such access to vocational training.

Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market.”