

## Summary of EMN Ad-Hoc Query No. [2019.4]

AHQ regarding a regulation for the work and residence permit for specialized chefs for the Asian restaurants

8 March 2019, prepared by NL NCP

### 1. KEY POINTS TO NOTE

- ★ Only **DE**, **NL** and **NO**<sup>1</sup> responded that they had a special regulation regarding entry of specialized chefs from third countries.
- ★ In other Member States there are however some regulations (indirectly) regarding cooks such as a bilateral agreement with China (**AT**), a regulation for skilled workers (**AT**, **UK**, **FR**, **IE**) and a quota (**MT**).
- ★ 12 countries provided figures on how many permits where granted. The most permits where granted in **NL** (1800 between 1 October 2016 - 1 October 2017 and 1530 between 1 October 2017 – 1 October 2018).
- ★ Most countries require proof of experience or education (**DE**, **ES**, **FR**, **HU**, **IE**, **LV**, **LU**, **NL**, **NO** and **UK**) to judge the qualifications. Other ways to examine are judgement by an employer (**EL**, **EE**, **MT**) or interviewing the applicant (**FI**).
- ★ Most countries reported to not have any major complications or unwanted side effects.

### 2. BACKGROUND AND CONTEXT

Since 2014 there is a regulation in place with regard to the work and residence permit of chefs for the Asian kitchen in the Netherlands. The current temporary regulation will end on the 1<sup>st</sup> of October of 2019. The current regulation has some unforeseen unwanted side effects. Therefore the Netherlands is contemplating what a possible new regulation should entail.

<sup>1</sup> The original answer from Norway to this ad-hoc query is included in this summary. Please be notified that as of April 1 2019 Norway has decided that there will no longer be a special type of residence permit for ethnic cooks.

Considering this, the Netherlands would like to gather some information about similar regulations in other European countries in order to learn from those regulations.

### 3. MAIN FINDINGS

*Question 1, 2 and 4. (1) Is there a special regulation in place in your country regarding the entry of specialized chefs from third countries? If yes, is there a distinction with regard to the Asian cuisine and/or with regard to certain specific countries? (2) What are the conditions to qualify for the special regulation? (4) In the regulation do you differentiate between the type of restaurants? (in case you do not have a special regulation can you please describe how you handle these cases in your Member State)*

Only three Member States (**NL**, **DE**, **NO**<sup>2</sup>) answered that they had a special regulation regarding the entry of specialized chefs from third countries. **The Netherlands** is the only Member State who differentiates between specific countries because the regulation is especially for specific specialized chefs in the Asian<sup>3</sup> catering industry. However, in Germany and Norway the way the qualifications are judged does vary depending on the country. What is interesting is that in **the Netherlands** this group has an exemption from the 'labour market test'.

<sup>2</sup> Please be notified that as of April 1, 2019 Norwegian authorities have decided that there will no longer be a special type of residence permit for ethnic cooks (chefs who work at a restaurant which offers food from one country only). From now on, foreign chefs will have to apply for a regular residence permit for skilled workers with an employer in Norway no matter what kind of restaurant. If someone wants to renew a previous permit to continue working for the same employer, this will be possible and if granted a renewal, that person will get a residence permit as a skilled worker in Norway and can continue working as a cook. If changing employers however, the foreign worker will fall under the new regulations and will not be granted a renewal of the previous permit.

<sup>3</sup> India, China, Japan, Indonesia, Korea, Malaysia, Thailand, Tibet of Vietnam cuisine

The labour market test entails that the permit is giving under conditions to stimulate the employer to make an effort to fill future job openings with workers from the European Union.

In **Germany**, permits can only be granted to speciality chefs for full employment in speciality restaurants when they are sufficiently qualified<sup>4</sup>. The quality of the restaurant and the number of its employees are taken into account.

In **Norway** you will in principle only be granted a residence permit as an ethnic cook in exceptional circumstances. The cook has to have the right qualifications<sup>5</sup> as an ethnic cook and minimum of ten years' relevant education and/or work experience (half of the work experience at a high-standard hotel/restaurant).

Although most countries reported that they had no special regulation for the answer on question 1 and 2 it became clear that there were some regulations (indirectly) in place regarding cooks. Several requirements can be highlighted. Please see below.

- **Austria** has a new bilateral agreement starting 2019 with China regarding the mutual admission of 30 speciality chefs to the labour market per year. The Chinese chefs are allowed to work for Chinese speciality restaurants for a maximum of three years under this agreement, without the possibility of renewal. **Austria** also has the possibility of seasonal employment for the maximum of 9 months in the area of tourism according to the annual quota. Additionally, **Austria** has a list of "Skilled workers in Shortage Occupations". In 2019, the list includes "Restaurant chefs". The chefs need a minimum education, minimum number of points<sup>6</sup> and a minimum salary.
- Some Member States (such as **Estonia, Greece, Croatia and Italy**) have an (annual) quota for employment of third country nationals. In **Estonia** there also needs to be consent from the Estonian Unemployment Insurance Fund and their employer is obliged to fulfil the salary criteria.

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<sup>4</sup> Chinese, Indian and Thai chefs require an additional examination certificate proving they have completed a practical and theoretical cooking and hygiene test, which must be taken at an educational institution accredited by the (German) Federal Employment Agency in the country of origin.

<sup>5</sup> If you are from China, you must have a certificate from the authorities stating that you are a 'level 1' cook or a 'level 2' cook. If you are from Thailand, you must have a certificate from the authorities stating that you are a 'level 2' cook.

<sup>6</sup> The Red-White-Red Card scheme regulates the immigration of qualified third-country nationals to Austria according to a criteria-based model. In order to receive a Red-White-Red Card, the applicant has to achieve the sufficient amount of points (e.g. for education, professional experience, age, language skills).

- Kitchen personnel in **Finland** require a residence permit for an employed person, which entails a two-stage process with a labour market needs assessment.
- In **France** the cook can apply for a specific residence permit dedicated to foreign talents.
- **Ireland** has a regulation with regard to the entry of 4 specific chef levels. The cook must have a minimum level of experience and there is a restriction as to the maximum number of permits per establishment and in total per occupation.
- In **Latvia** a vacancy has to be reported, there needs to be a work contract, a minimum amount of three years' experience in the profession and the employer can't have a tax debt.
- In **Luxembourg** employers must make a declaration of vacant position and the employment agency checks whether there is a suitable candidate available on the local or EU job market. If within 3 weeks nobody is found the employer can apply for a certificate granting him the right to hire a third country national. The third-country worker can then submit an application for a temporary authorisation to stay.
- In **Malta** there is an assessment of the situation of the labour market, competence of the third country national applicant and reputability of the prospective employer. The catering establishment has to be registered with the competent local authority and a quota is applicable depending on the seating capacity of the catering establishment.
- **Poland** does have an exemption from labour market test for national/regional chefs (on the basis of regional legal act) in one region in **Poland** (Silesian Voivodship).
- In **Sweden** the applicant must have an job offer in order to apply for a work permit and there are more stringent requirements for a restaurant to prove that the business can guarantee a salary.
- In **Spain** the third-country national must obtain a general residence and work permit unless they can be considered, attending to their experience and qualification, a highly qualified professional.
- In the **United Kingdom** a chef can qualify as a shortage occupation chef (limited type of chef) with a minimum salary (£29,570 per year) and five or more years relevant experience. There is a quota per restaurant.

Question 3. How many specialty chefs from a third country are granted a permit in your country every year (can you please provide data for 2017 and 2018)?

12 countries provided figures on how many visas/permits were granted. Please see the table below.<sup>7</sup>

The most permits were granted in **the Netherlands** (1800 between 1 October 2016-1 October 2017 and 1530 between 1 October 2017 – 1 October 2018).

Country	2017	2018
DE <sup>8</sup>	1063	NA
NO	Estimated 50-70	Estimated 50-70
FI <sup>9</sup>	476	607
AT <sup>10</sup>	64	100
IE	251 <sup>11</sup>	376 <sup>12</sup>
LV <sup>13</sup>	274	330
CZ <sup>14</sup>	4 chefs + 587 line cooks <sup>15</sup>	1 chef + 794 line cooks <sup>16</sup>
HR <sup>17</sup>	NA	109
LU <sup>18</sup>	325 (between 10/16 and 09/17)	152 (between 10/17 and 09/18)

<sup>7</sup> Please note that these numbers are difficult to compare, since several Member States provided the number of granted visas, while others provided the numbers of residence permits. Additionally, some numbers contain the total number of kitchen personnel, while others concern specifically Asian Chefs.

<sup>8</sup> Visas issued to speciality chefs.

<sup>9</sup> Numbers of total kitchen personnel.

<sup>10</sup> Red-White-Red Cards

<sup>11</sup> Inclusive of all four chef levels eligible at the time - it is not possible to give definitive numbers for one specific chef level.

<sup>12</sup> Inclusive of all four chef levels eligible across two regulations, prior to and after March 2018.

<sup>13</sup> Specified to Asian chefs. Please be informed that these numbers both contain visas and residence permits.

<sup>14</sup> Granted general long-term residence permit for the purpose of employment

<sup>15</sup> 46% Chinese

<sup>16</sup> 40% Chinese

<sup>17</sup> Permits for international cuisine cooks.

<sup>18</sup> The following data, based on the ISCO code (International Standard Classification of Occupations), relate to the number of residence permits issued (first issue and renewals) and not to the number of persons concerned (one person may have had more than one permit during the reference period). The data distinguishes between cooks and other catering professions. It is not possible to indicate whether the Asian cooks are working in restaurants serving Asian cuisines or not.

NL	1800 (between 10/16 and 09/17)	1530 (between 10/17 and 09/18)
ES	27 (from which 7 to third country nationals with an Asian background)	26 (from which 8 to third country nationals with an Asian background)
EL	166 and 5 more available vacancies for Vietnamese cuisine (totals for 2017 and 2018)	

Question 5. How do you judge the qualifications of the applicant?

The following methods to judge the qualifications of the applications were mentioned by the responding Member States.

**Germany, France, Luxembourg and Norway** demand proof of education, training and work experience. In **the Netherlands** the rule applies that an applicant has to show qualifications by submitting a certified diploma and/or certificate. **Ireland, Latvia<sup>19</sup> and the United Kingdom** require proof of experience. **Finland** conducts an interview to judge the qualifications. **Greece, Estonia and Malta**, let the employer judge the qualifications. Additionally, **Malta** requires the cook to have a Card from the Food Safety Commission. Moreover, **Austria** stated that they have a list of criteria. The cook has to get a minimum amount of points in order to be granted a permit. In **Croatia** the same judgement of qualification applies as other third country nationals falling within the scope of the annual quota. It is, however, not specified what the judgement of qualification entails.

Question 6. Are there any complications or unwanted side effects when dealing with these cases?

Several Member States reported some complications or other unwanted side effects.

**Norway** stated that it is difficult to define ethnicity and that strict requirements relating to restaurants has made it difficult to accept new concepts like crossover and fusion restaurants.

**The United Kingdom** received requests for a lower salary requirement and due to the expansion of services such as Deliveroo and UberEats, hears challenges to prohibition to working in an establishment which offers take away.

<sup>19</sup> Min. 3 years

**Finland** answered that in case of signs of misconduct or signs of human trafficking they always conduct an interview. **Latvia** reported that there are some cases of abuse when an employer invites the third-country national and then refuses to pay a salary or the restaurant has not been even opened yet but these have been only some cases. Otherwise, taking into consideration the relatively low number of issued permits, there are no other problems to be shared.

**The Netherlands** stated that the regulation in place does not encourages employers enough to make efforts to come to a sustainable solution for the shortage of chefs who are qualified in the Netherlands and the European Union. There are, for instance, signals that the regulation is being used to bring cooks from third countries to chefs in restaurants where it is doubtful an Asian specialist is required. **Luxembourg** explained that in their country employers made the declaration of a vacant position with a very specific profile that allows them to refuse any candidate available on the local or EU job market.

**Austria, Germany, Italy, Greece, Spain** and **Malta** reported that there are no (significant) problems and/or unwanted side effects.

In other Member States<sup>20</sup> no information was available and/or provided.

*Question 7. What is the (maximum) period of validity of the residence and/or work permit?*

Please see the table below for the length of the residence and/or work permit. Please note that these numbers do not differentiate between specialized residence permits or (temporary) general residence permits for work.

Some Member States also reported on the possibility to extend the (specialized) residence permit. If information is provided, it is included in the table below.

Length	Country
1 year	DE <sup>21</sup> , ES <sup>22</sup> , FI <sup>23</sup> , HR <sup>24</sup> , LU <sup>25</sup> , MT, NO <sup>26</sup>
2 years	AT, CZ <sup>27</sup> , EL <sup>28</sup> , IE <sup>29</sup> , IT, NL, SE
4 years	FR
5 years	EE, LV <sup>30</sup>
5 years + 1 month	UK
N/A	BE, CY, LT, PT, SI

<sup>21</sup> The permit is granted for the first time for a maximum of one year. With extensions, the maximum period of validity can be four years. After that, there is a blocking period of three years before the person concerned can be granted any such permit again.

<sup>22</sup> In principle, a temporary residence and work permit will be issued, valid for one year renewable for two years, unless a long-term residence permit is issued, provided he/she meets all the requirements.

<sup>23</sup> A first residence permit is granted for one year (if the employment contract is not less than one year), the permit extension after that is four years if the employment conditions are maintained.

<sup>24</sup> Temporary residence and work status is granted up to one year and can be renewed (indefinitely) and qualifies for a permanent residence permit.

<sup>25</sup> The first year is limited to 1 section/profession after this year there is no limit anymore.

<sup>26</sup> It can be renewed (indefinitely) and qualifies for a permanent residence permit (with a 3 year qualification period).

<sup>27</sup> An employee card is most often issued for the duration of the employer-employee relationship but not for more than 2 years, with an option to repeatedly extend its validity.

<sup>28</sup> May be renewed every three years.

<sup>29</sup> Until max 5 years.

<sup>30</sup> A temporary residence permit may be granted for the period of employment, but not exceeding 5 years. The residence permit card (with the rights to work) may be issued for 1 year till the residence permit's registration date.

<sup>20</sup> BE, CZ, CY, EE, FR, HR, HU, IE, LT, PL, PT, SE, SI

**EMN NCPs participating:** Responses from Austria, Belgium, Croatia, Czech Republic, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Slovenia, Slovak Republic, Spain, Sweden, United Kingdom and Norway (26 in total).