



**Australian Government**  
**Refugee Review Tribunal**

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# Country Advice

## Lithuania

Lithuania – LTU38020 – European Union  
– Residency – Entry – Asylum  
25 January 2011

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**1. With reference to s.36(3) of the Migration Act please advise on ability of/restrictions on Lithuanian citizens entering and residing in other European Union member countries.**

S. 36(3) of the *Migration Act 1958* provides that:

Australia is taken not to have protection obligations to a non-citizen who has not taken all possible steps to avail himself or herself of a right to enter and reside in, whether temporarily or permanently and however that right arose or is expressed, any country apart from Australia, including countries of which the non-citizen is a national.

Thus under the Act Australia does not owe protection to persons who have a right to land in another country, who have not taken all possible steps to enter that country, and who do not have well-founded fear of Convention-based persecution in that country or of refoulement from the other country to another country where they may face Convention based persecution.<sup>1</sup>

Lithuania is one of eight former Soviet countries accepted into the European Union (EU) on 1 May 2004.<sup>23</sup> It appears that as citizens of an EU member country Lithuanians should face little difficulty in entering other EU member countries, and should be able to enter most without systematic border controls. Searches also revealed that Lithuanian citizens should be able to reside in most other EU countries for the purpose of working or seeking employment without applying for a work permit. Lithuanians seeking residence in other EU member countries on the basis of an asylum claim may face difficulties as member countries tend to regard one another as safe countries of origin and therefore do not appear to generally admit internal asylum claims.

### **Entering Other EU Member Countries Temporarily**

For temporary stays in third countries, the Europa website advises that citizens of EU member countries are able to enter and stay in other EU countries (and additionally Iceland,

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<sup>1</sup> 2010, 'A Guide to Refugee Law in Australia', Refugee Review Tribunal, ch.9 [www.mrt-rrt.gov.au/.../126/third\\_country\\_protection\\_ch9.pdf.aspx](http://www.mrt-rrt.gov.au/.../126/third_country_protection_ch9.pdf.aspx) – Accessed 20 January 2011 – Attachment 1

<sup>2</sup> '2000 – Today: A Decade of Further Expansion' Undated, Europa website [http://europa.eu/abc/history/2000\\_today/index\\_en.htm](http://europa.eu/abc/history/2000_today/index_en.htm), – Accessed 19 January 2011 – Attachment 2

<sup>3</sup> A map detailing EU Member Countries, including potential candidate member countries is available for download from the Europa website: 'Countries in Europe', 2007 [http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en\\_GB/-/GBP/ViewPublication-Start?PublicationKey=NA7807398](http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/GBP/ViewPublication-Start?PublicationKey=NA7807398) – Accessed 19 January 2011 – Attachment 3

Lichtenstein and Norway) for a period of up to 3 months.<sup>4</sup> Whilst EU member country citizens are not required to register with their host country to take advantage of this provision, they do need to be in possession of a valid passport or identity card for the duration of their stay.<sup>5</sup>

Most EU member countries are currently participants in the Schengen Convention, which allows for the abolition of systematic border controls between participants, with the following exceptions. Bulgaria, Cyprus, Ireland, Romania and the United Kingdom have not signed the agreement in relation to border controls,<sup>6</sup> thus controls still apply for Lithuanian nationals entering these EU member countries.<sup>7</sup> Also noteworthy is the fact 3 non-EU states have signed and implemented the Convention, implying that Lithuanian nationals with appropriate documentation may also enter Iceland, Norway and Switzerland without border controls.<sup>8</sup>

Notably, these arrangements apply to the ability to enter participating countries temporarily, not the rights of people to live and work in participating countries. Amongst EU member countries these rights are dealt with internally by EU directives and regulations.

### **Labour Market Restrictions**

The right to residence is closely linked with the right to seek work within the EU.<sup>9</sup> Article 39 of the EC Treaty entitles citizens of EU member countries to seek employment in other EU member countries,<sup>10</sup> and reside there for that purpose for as long as the citizen actively seeks employment and can show there is a genuine chance he or she will become engaged in employment.<sup>11</sup> Specifically, the Treaty entitles citizens to:

- Look for a job in another EU member country.
- Live in that country for the purpose of looking for work.
- Work in that country without needing to apply for a work permit.
- Stay in the host country after employment has ceased.
- Enjoy equal treatment with host country nationals in access to employment, working conditions and all other social and tax advantages.<sup>12</sup>

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<sup>4</sup> 'Crossing Borders', 2010, Europa website, 30 July [http://ec.europa.eu/home-affairs/policies/borders/borders\\_rights\\_en.htm](http://ec.europa.eu/home-affairs/policies/borders/borders_rights_en.htm) – Accessed 25 January 2011 – Attachment 4

<sup>5</sup> 'Documents You Need: EU Nationals', 2011, Europa website, 5 January [http://ec.europa.eu/youreurope/citizens/travel/entry-exit/eu-citizen/index\\_en.htm?profile=0](http://ec.europa.eu/youreurope/citizens/travel/entry-exit/eu-citizen/index_en.htm?profile=0) – Accessed 19 January 2011 – Attachment 5

<sup>6</sup> Ireland and the United Kingdom have applied to take part in other police and criminal judicial co-operation measures under the Convention.

<sup>7</sup> 'The Schengen Area and Cooperation' 2009, Europa website, 3 August, [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133020\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm) – Accessed 19 January 2011 – Attachment 6

<sup>8</sup> 'Schengen area' 2010, European Commission website [http://ec.europa.eu/home-affairs/policies/borders/borders\\_schengen\\_en.htm](http://ec.europa.eu/home-affairs/policies/borders/borders_schengen_en.htm) – Accessed 6 January – Attachment 7

<sup>9</sup> 'The Right of Residence', undated, Europa website <http://ec.europa.eu/social/main.jsp?catId=460&langId=en> – Accessed 21 January 2011 – Attachment 8

<sup>10</sup> 'Consolidated Version of the Treaty Establishing the European Community' 2002, Europa website, 24 December [http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C\\_2002325EN.003301.html](http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html) – Accessed 21 January 2011 – Attachment 9

<sup>11</sup> 'The Right to Look for a Job', undated, Europa website <http://ec.europa.eu/social/main.jsp?catId=459&langId=en>, – Accessed 21 January 2011 – Attachment 10

<sup>12</sup> 'Free Movement, EU Nationals', undated, Europa website <http://ec.europa.eu/social/main.jsp?langId=en&catId=457> – Accessed 21 January 2011 – Attachment 11

- It is noted that there are some limitations in terms of employment with the public service of the host country.<sup>13</sup>

However, the rights of original member countries to impose labour market restrictions is also provided for in transitional arrangements for EU enlargement under the EC Treaty Article 39, which allows existing member states to impose labour market restrictions on citizens of new member states for a period of up to 7 years from the date of accession to the EU. Thus, pursuant to the EC Treaty any such restrictions still in place in relation to Lithuanian workers should in principle expire on 30 April 2011.<sup>14</sup>

All but three of the original 15 EU Member States did initially impose some restrictions on workers from countries known as the EU 8 (those who joined in 2004, including Lithuania, but excluding Cyprus and Malta). The three countries with open door policies for 2004 entrants to the EU were Ireland, Sweden and the UK. However immigrant workers from 2004 Member Countries were still subject to general immigration restrictions in addition to any restrictions imposed particularly on citizens of their nationality. For example, Ireland introduced new rules in 2004 whereby immigrants from all EU countries except the UK would be ineligible for benefits for two years.<sup>15</sup>

Searches indicated that most EU member countries have now lifted any restrictions pertaining to workers from EU 8 member countries,<sup>16</sup> with exceptions in Austria<sup>17</sup> and Germany<sup>18</sup> where work permit application processes still apply. The United Kingdom requires EU 8 workers to register for data collection purposes, a process attracting a once-off £70 fee for the worker.<sup>19</sup>

Under Directive 2004/38 EC, Lithuanian citizens also appear to be eligible for permanent residency after a period of five years of residence in their host state. Furthermore, this eligibility should also extend to family and in some cases also extends to partners.<sup>20</sup>

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<sup>13</sup> 'Employment in the Public Sector', undated, Europa website

<http://ec.europa.eu/social/main.jsp?catId=465&langId=en> – Accessed 25 January 2011 – Attachment 12

<sup>14</sup> 'Enlargement, Transitional Arrangements: Workers from New Member States, Transitional Arrangements', undated, Europa website <http://ec.europa.eu/social/main.jsp?catId=466&langId=en> – Accessed 19 January 2011 – Attachment 13

<sup>15</sup> 'EU free movement of labour map' 2009, *BBC News* 17 April <http://news.bbc.co.uk/2/hi/europe/3513889.stm> – Accessed 19 January 2011 – Attachment 14

<sup>16</sup> 'Britain debates key globalization puzzle' 2007, *North County Times*, 4 January [http://www.nctimes.com/articles/2007/01/05/news/nation/9\\_09\\_071\\_4\\_07.txt](http://www.nctimes.com/articles/2007/01/05/news/nation/9_09_071_4_07.txt) – Accessed 21 January 2011 – Attachment 15

<sup>17</sup> 'Free Movement: Austria', undated, Europa website, <http://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=AT&fromCountryId=LT&accessing=0&cont ent=1&restrictions=1&step=2> – Accessed 20 January 2011 – Attachment 16

<sup>18</sup> 'Free Movement: Germany', undated, Europa website, <http://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=DE&fromCountryId=LT&accessing=0&cont ent=1&restrictions=1&step=2> – Accessed 20 January 2011 – Attachment 17

<sup>19</sup> 'Free Movement: United Kingdom', undated, Europa website, <http://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=UK&fromCountryId=LT&accessing=0&cont ent=1&restrictions=1&step=2> – Accessed 20 January 2011 – Attachment 18

<sup>20</sup> 'Free movement and residence rights of EU citizens and their families: the Commission assesses application by Member States' 2008, Europa website, 10 December <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1922&type=HTML&aged=0&language=EN&gu iLanguage=en> – Accessed 5 January 2011 – Attachment 19

## Asylum Claims within the EU

Lithuanian asylum seekers may face difficulties taking up residence in another EU host country on the basis of an asylum claim. Whilst the right to asylum is guaranteed by the Charter of Fundamental Rights of the European Union<sup>21</sup>, under the Spanish Protocol (part of the Treaty of Amsterdam which addresses rights within the EU) member states are directed to regard one another as constituting safe countries of origin. This directive is not legally binding and individual asylum cases may be deemed admissible by member countries.

However, searches revealed little evidence of EU member countries admitting asylum claims from within the EU for consideration. A 2007 report by the Immigration and Refugee Board of Canada states that an official from the EC Directorate-General for Justice, Freedom and Security, who has carriage of asylum issues within the European Commission, explained the Protocol in the following manner:

A[sylum applications from EU citizens are in general to be declared inadmissible by Member States. However, exceptionally, a Member state may unilaterally decide in individual cases to examine asylum applications lodged by nationals of another Member State.... [T]he examination should be compatible with the provisions of the Protocol, which means that the application should be dealt with on the basis of the presumption that it is manifestly unfounded.

It appears that the Spanish Protocol is widely implemented across Europe and asylum applications within the EU are rare.<sup>22</sup> No further information was found on any recent cases of Lithuanian citizens successfully claiming asylum within the EU.

## Attachments

1. 2010, 'A Guide to Refugee Law in Australia', Refugee Review Tribunal, [www.mrt-rrt.gov.au/.../126/third\\_country\\_protection\\_ch9.pdf.aspx](http://www.mrt-rrt.gov.au/.../126/third_country_protection_ch9.pdf.aspx) – Accessed 20 January 2011.
2. '2000 –Today: A Decade of Further Expansion' undated, Europa website [http://europa.eu/abc/history/2000\\_today/index\\_en.htm](http://europa.eu/abc/history/2000_today/index_en.htm), – Accessed 19 January 2011.
3. 'Countries in Europe', 2007 [http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en\\_GB/-/GBP/ViewPublication-Start?PublicationKey=NA7807398](http://bookshop.europa.eu/is-bin/INTERSHOP.enfinity/WFS/EU-Bookshop-Site/en_GB/-/GBP/ViewPublication-Start?PublicationKey=NA7807398) – Accessed 19 January 2011.
4. 'Crossing Borders', 2010, Europa website, 30 July [http://ec.europa.eu/home-affairs/policies/borders/borders\\_rights\\_en.htm](http://ec.europa.eu/home-affairs/policies/borders/borders_rights_en.htm) – Accessed 25 January 2011.
5. 'Documents You Need: EU Nationals', 2011, Europa website, 5 January [http://ec.europa.eu/youreurope/citizens/travel/entry-exit/eu-citizen/index\\_en.htm?profile=0](http://ec.europa.eu/youreurope/citizens/travel/entry-exit/eu-citizen/index_en.htm?profile=0) – Accessed 19 January 2011.

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<sup>21</sup> 'Asylum: A Common Place of Protection and Security', 2010, Europa website, 30 July [http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm) – Accessed 21 January 2011

Attachment 20

<sup>22</sup> Immigration and Refugee Board of Canada 2007, ZZZ102549.E - *European Union (EU) Member States: Application of the Protocol on Asylum for Nationals of Member State*, 12 October <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=474e89551e> Accessed 19 January 2011 – Attachment

6. 'The Schengen Area and Cooperation' 2009, Europa website, 3 August [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/133020\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/133020_en.htm) – Accessed 19 January 2011.
7. 'Schengen area' 2010, European Commission website [http://ec.europa.eu/home-affairs/policies/borders/borders\\_schengen\\_en.htm](http://ec.europa.eu/home-affairs/policies/borders/borders_schengen_en.htm) – Accessed 6 January 2011.
8. 'The Right of Residence', undated, Europa website <http://ec.europa.eu/social/main.jsp?catId=460&langId=en> – Accessed 21 January 2011.
9. 'Consolidated Version of the Treaty Establishing the European Community' 2002, Europa website, 24 December [http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C\\_2002325EN.003301.html](http://eur-lex.europa.eu/en/treaties/dat/12002E/htm/C_2002325EN.003301.html) – Accessed 21 January 2011.
10. 'The Right to Look for a Job', undated, Europa website <http://ec.europa.eu/social/main.jsp?catId=459&langId=en>, – Accessed 21 January 2011.
11. 'Free Movement, EU Nationals', undated, Europa website <http://ec.europa.eu/social/main.jsp?langId=en&catId=457> – Accessed 21 January 2011.
12. 'Employment in the Public Sector', undated, Europa website <http://ec.europa.eu/social/main.jsp?catId=465&langId=en> – Accessed 25 January 2011.
13. 'Enlargement, Transitional Arrangements: Workers from New Member States, Transitional Arrangements', undated, Europa website <http://ec.europa.eu/social/main.jsp?catId=466&langId=en> – Accessed 19 January 2011.
14. 'EU free movement of labour map' 2009, *BBC News* 17 April <http://news.bbc.co.uk/2/hi/europe/3513889.stm> – Accessed 19 January 2011.
15. 'Britain debates key globalization puzzle' 2007, *North County Times*, 4 January [http://www.nctimes.com/articles/2007/01/05/news/nation/9\\_09\\_071\\_4\\_07.txt](http://www.nctimes.com/articles/2007/01/05/news/nation/9_09_071_4_07.txt) – Accessed 21 January 2011.
16. 'Free Movement: Austria', undated, Europa website, <http://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=AT&fromCountryId=LT&accessing=0&content=1&restrictions=1&step=2> – Accessed 20 January 2011.
17. 'Free Movement: Germany', undated, Europa website, <http://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=DE&fromCountryId=LT&accessing=0&content=1&restrictions=1&step=2> – Accessed 20 January 2011.
18. 'Free Movement: United Kingdom', undated, Europa website, <http://ec.europa.eu/eures/main.jsp?acro=free&lang=en&countryId=UK&fromCountryId=LT&accessing=0&content=1&restrictions=1&step=2> – Accessed 20 January 2011.
19. 'Free movement and residence rights of EU citizens and their families: the Commission assesses application by Member States' 2008, Europa website,

10 December

<http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1922&type=HTML&aged=0&language=EN&guiLanguage=en> – Accessed 5 January 2011.

20. ‘Asylum: A Common Place of Protection and Security’, 2010, Europa website, 30 July [http://ec.europa.eu/home-affairs/policies/asylum/asylum\\_intro\\_en.htm](http://ec.europa.eu/home-affairs/policies/asylum/asylum_intro_en.htm) – Accessed 21 January 2011.
21. Immigration and Refugee Board of Canada 2007, ZZZ102549.E - *European Union (EU) Member States: Application of the Protocol on Asylum for Nationals of Member State*, 12 October <http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?page=printdoc&docid=474e89551e> – Accessed 19 January 2011.