



# YOUR EUROPE ADVICE ANNUAL TRENDS

2016

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Your Europe Advice is an EU advice service provided by legal experts from ECAS operating under contract with the European Commission<sup>1</sup>. It consists of a team of about 60 lawyers who cover all 24 official EU languages and are familiar both with EU law and national laws in all EU countries. Your Europe Advice replies to questions from citizens or businesses on their EU rights.

In 2016, YEA legal experts replied to 20,491 enquiries. These enquiries provide information about the problems faced by citizens who seek to exercise their right to free movement.

ECAS develops quarterly feedback reports based on the most interesting cases<sup>2</sup> handled by YEA. These reports are used to highlight ongoing issues encountered by EU citizens and their family members in the internal market.

The YEA annual trends are based on the 2016 figures extracted from the YEA database and the YEA quarterly feedback reports of 2016.

## 1. Nature of the Enquiries

YEA uses a classification system that groups issues together under various topics. In 2016, the most important topics in terms of numbers were: social security, entry procedures and residence.

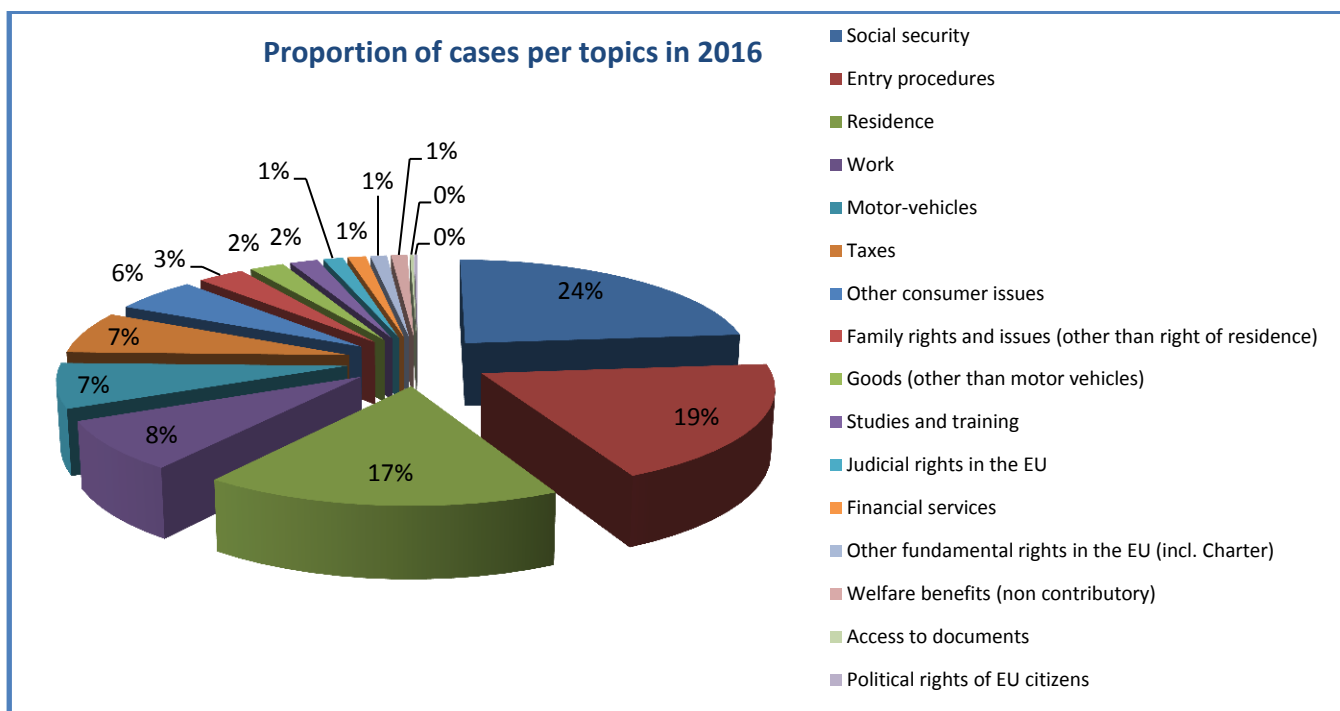


Figure 1: Source YEA Database

<sup>1</sup> Further information on Your Europe Advice can be found here: [http://europa.eu/youreurope/advice/about\\_en.htm](http://europa.eu/youreurope/advice/about_en.htm)

<sup>2</sup> A YEA case is considered “interesting” if it presents an infringement, misapplication or ignorance of EC law, a grey area in EC law or an objective difficulty for citizens to get the necessary information in order to exercise their rights.

Social security is, and has always been, the most important issue for EU citizens who choose to exercise their free movement rights in the EU. Social security touches upon health and financial concerns, which are perceived as crucial by citizens. At present, 24% of Your Europe Advice enquiries relate to social security, representing over 5,300 enquiries per year. In 2016, however, for the first time in 20 years, the percentage did not rise.

From 2011 to 2016, the proportion of YEA enquiries relating to residence remained constant at about 17%. However, the percentage of enquiries relating to entry formalities has increased each year, from 11% in 2011 to 19% in 2016.

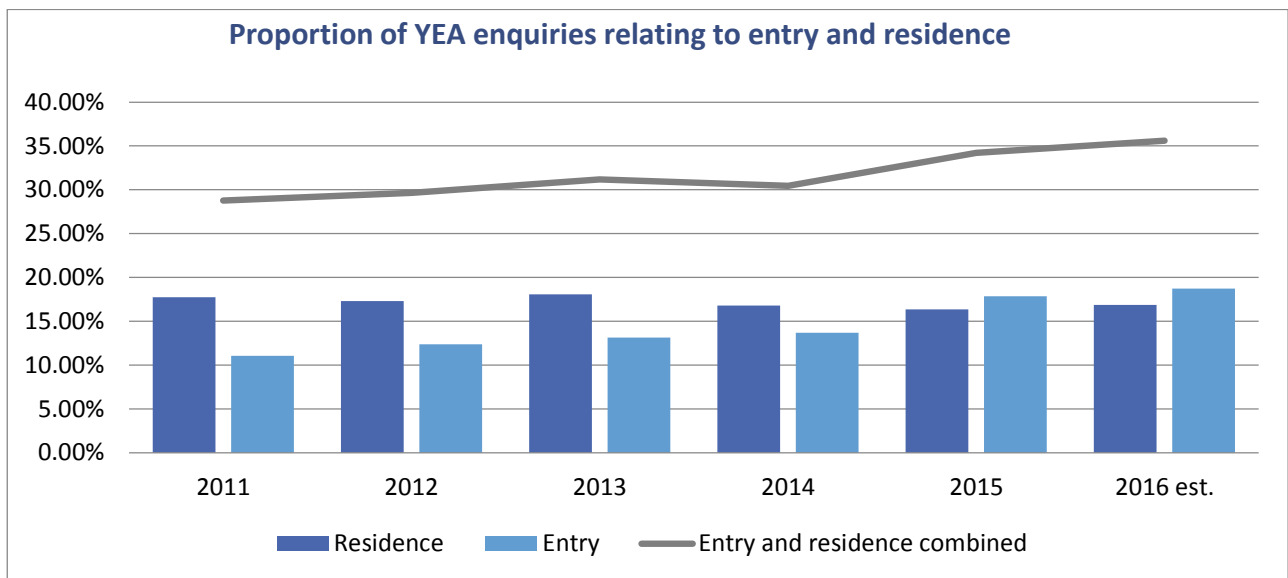


Figure 2: Source YEA Database

In 2016, enquiries were received from all 28 EU countries, Norway, Iceland, and from third country nationals who are family member of an EU citizen.

18% of all enquiries received concerned the United Kingdom, which is partly due to Brexit:

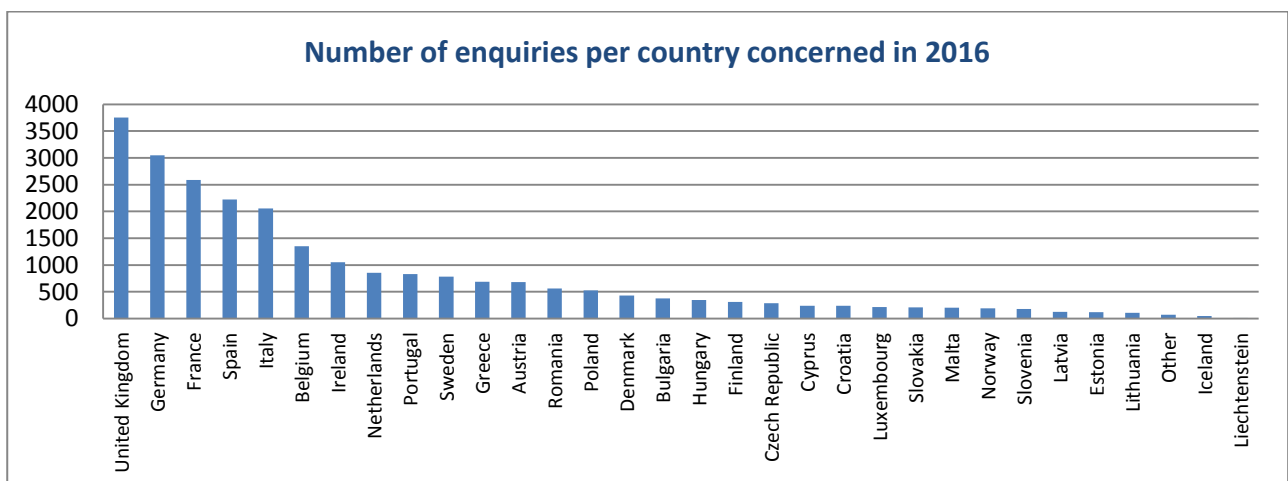


Figure 2: Source YEA Database



## 2. The five main issues in 2016

Each topic is divided into subtopics. In 2016, the most important subtopics in terms of numbers were the following:

1. Residence - family rights: 1,816 enquiries
2. Entry - long/short term visas: 1,691 enquiries
3. Social security - country of insurance: 1,387 enquiries
4. Entry – visa exemptions: 1,371 enquiries
5. Social security: old age pensions 909

### 2.1 Social security

#### **2.1.1 Country of insurance (1,387 enquiries in 2016)**

Articles 11 and 13 of Regulation (EC) No 883/2004 provide that EU citizens are covered by the legislation of only one country at a time. The Member State concerned is the one in which a citizen pursues gainful activity. Particular rules are provided for certain categories of workers, such as civil servants, who can be insured in the Member State in which the administration is employing them, and workers who are employed or self-employed in several EU countries. However, the complexity of the rules, the lack of information and training, and the insufficient co-ordination between Member States often make it difficult to determine which Member State is competent. Citizens do not know where to pay social contributions when they work in two countries, when they live in one country and work in another, or when they retire in another country. Some Member States deny responsibility and declare that they are not competent when they are or, on the contrary, declare themselves to be competent when they are not. It is a recurring issue and concerns most EU countries. The European Court of Justice has consistently held that the purpose of the rules on the coordination of social security is to prevent citizens from losing the protection of social security when exercising their right of free movement in the EU<sup>3</sup>. Yet, citizens continue to experience problems in maintaining social security coverage when they move from one country to another.

***Example:** A Belgian citizen began working in France as a self-employed person on 1 September 2016 and registered with the social security authorities on 5 October. He experienced a health problem at the end of September. The French social security authorities refused to reimburse his expenses stating that the dossier in France had only been 'opened' on 5 October. Meanwhile the citizen was no longer registered under the Belgian system. As this citizen officially started work in France on 1 September, the French social security authorities should be the ones to reimburse his expenses, including those arising before 5 October.*

#### **Recommendations:**

**Administrative cooperation between national authorities must be improved. The Regulation (EC) No 883/2004 on the coordination of social security schemes provides for this, but it is not binding enough.**

**Requests for information should be responded to without delay and in any event within three months. In case of exceptional situations when it is not possible to respond within 3 months, the competent authority should indicate deadlines and provide updates.**

<sup>3</sup>C-2/89 *Kits van Heijningen*, para 12: "Those provisions are intended not only to prevent the simultaneous application of a number of national legislative systems and the complications which might ensue, but also to ensure that the persons covered by Regulation No 1408/71 are not left without social security cover because there is no legislation which is applicable to them." See also Case C-196/90 *De Paep*, para 18; Case C-619/11 *Dumont de Chassart*, para 38; Case C-140/12 *Brey*, para 40



### 2.1.2 Old age pension (909 enquiries in 2016)

Most of the problems reported in accessing specific social benefits concern old age pensions. Article 6 of Regulation (EC) No 883/04 recognises the principle of aggregation of periods, which means that the acquisition of the right to receive benefits in one Member State must take into account periods of insurance, employment, self-employment and residence in another Member State. Some enquiries demonstrated the difficulties that citizens experience in receiving clear and correct information about the aggregation of periods of insurance in different Member States. Article 7 of Regulation (EC) No. 883/2004 provides that pension payments should not be subject to any reduction, amendment, suspension, withdrawal or confiscation because the beneficiary or the members of his/her family reside in a Member State other than that in which the institution responsible for providing benefits is situated. There is also a persistent lack of cooperation between national authorities despite the obligation of cooperation imposed by Article 76 of Regulation (EC) No 883/2004. Consequently, citizens face problems with claiming all the pension rights they have acquired in different EU countries and are sometimes left without income. It is a common issue encountered in most EU countries.

**Example:** *A Spanish citizen, who had worked for 25 years in Sweden and 10 years in Spain, moved some months ago to Sweden in order to apply for his pension there. He made his application in April 2016 in Stockholm and the competent authority sent it to its counterpart in Spain. So far, almost on year has passed and no response has been received from Spain. The citizen still has not received any payments.*

#### **Recommendation:**

**Pensioners need good quality information both from the sending country before departure and the receiving country upon and after arrival. The European Commission should reinforce the obligation of communication and cooperation between concerned Member States as stated in Article 76 of Regulation (EC) No. 883/2004.**

### 2.1.3 Other recurrent and country specific issues linked to social security:

- YEA received a lot of enquiries reporting excessive delays in processing family benefit claims and payments of these benefits in Germany. The issue is serious as some citizens submitted their applications in 2015 but are still waiting for their family benefits or differential payment claims to be determined. Cross border workers (EU citizens working in Germany but living in another EU country) are especially affected.

**Example:** *A Hungarian citizen working in Germany submitted his application for German family benefits in 2012 for his two children living in Hungary. In 2013, the German family benefit office started to pay out his monthly benefits, but in July 2014 his payments were stopped and since then he has been unable to get reliable information on what has happened to his application. The competent authority has not been responsive.*

- YEA continues to receive cases linked to the right of residence. The right of residence under the Directive is subject to proof of health insurance to ensure that citizens do not become a burden on the social security system of the host Member State during their stay. While this proof can be demonstrated by several means, some Member States refuse to recognise any form other than the S1<sup>4</sup>. They refuse to accept an insurance policy or any other statement or form proving that a citizen is covered by health insurance. This is a recurrent issue in Sweden but more and more countries refuse to deliver the appropriate forms, in particular the S1 form, or to recognise those coming from another EU country (especially Romania, Bulgaria, Sweden, Germany and France).

<sup>4</sup> The S1 form is a certificate of entitlement to healthcare if an EU citizen doesn't live in the country where he/she is insured. It is useful for posted workers, cross-border workers, pensioners and civil servants and their dependants.



**Example:** A French worker in Sweden in insecure employment (interim, possibly part-time work) cannot obtain an S1 form from France since he is not insured there anymore. This however prevents him from registering with the Swedish system and obtaining a personal number because he has not presented an S1 form. Not having a personal number makes it very difficult to have a normal life in Sweden as a mobile EU worker as it is a pre-condition for accessing public and private services.

## **2.2 Entry and Residence rights**

### **2.2.1 Residence: family rights (1,816 enquiries in 2016)**

Under Directive 2004/38/EC, EU citizens' family members are also covered by the right of free movement if they are dependents of an EU citizen. The right is limited to the EU country in which the EU citizen is exercising treaty rights (by living, working or studying in another EU country). A family member is defined as: a spouse or registered partner, a child under the age of 21, or a dependent child or parent (of the EU citizen or partner). There is a second category of extended family members that can be included if the national legislation provides for it. It covers dependent relatives (especially siblings), dependent household members and unmarried/unregistered partners in a "durable relationship".

Most EU citizens who contact YEA know about their free movement rights but are worried about a family member (economically dependent EU citizens, or non-EU citizens). There is a lack of information available regarding the right of residence for family members in some Member States. Citizens experience a number of bureaucratic impediments to getting their rights recognised, such as: having to prove a durable relationship or to 'legalise' marriage certificates in order to obtain a residence card, language requirements in order to obtain a residence certificate, or having their passport retained by national authorities until they have obtained a residence certificate. It is a common issue encountered in most EU countries.

#### **Examples:**

*Private health insurance coverage was required by French authorities for the residence card application of a non-EU family member of a British citizen resident in France for two years, even though the latter was working, paying contributions in France and therefore his family's member was covered by his health insurance.*

*An Italian citizen married a Brazilian citizen in Brazil and had their marriage documents translated and legalised in Ireland where they were living. Later they moved to Spain for professional reasons but faced obstacles from the immigration authorities in Barcelona to get their marriage documents accepted for the purposes of a residence permit. The immigration authorities asked them to register their civil status documents in their country of origin or at the corresponding consulate, which is contrary to EU law if the documents are translated and legalised or Apostilled.*

#### **Recommendations:**

**Member States should ensure the proper training of national authorities. Member States should also ensure that the national legislation is clear and detailed enough to guarantee the attainment of the Directive's objectives. Where it is necessary, national laws should be supplemented by adequate administrative guidelines in order to provide clear instructions on the application of the Directive. All Member States should harmonise the definition of "durable relationship".**

### **2.2.2 Entry: long term/short term visas (1,691 enquiries in 2016)**

Article 5(2) of Directive 2004/38/EC obliges EU Member States to provide every opportunity for family members of third country nationals to obtain the necessary visas for short or long term stays, including issuing them free of charge,

through an accelerated procedure. The enquiries received by YEA show that family members of EU citizens continue to experience difficulties in obtaining visas for several reasons. The service providers contracted by embassies to process Schengen visa applications ignore the rules of the Directive - the procedures are long, extra documentation is required and it is not free of charge. It is a common issue encountered in most EU countries.

**Example:** *A United Kingdom national applied for a Schengen visa for his dependent father to travel with him from the UK to France. Admittedly, the process was complicated by the father's change of name, but he had provided evidence of this. Yet, he was still without news about the outcome of the application a couple of weeks before their planned trip. The 15 day period for deciding on visa applications was not respected, without justification or information about a delay in the procedure provided.*

**Recommendation:**

**Member States should put in place an effective, harmonised and efficient system of complaints against refusals to issue visas and establish a supervisory body to oversee the work of visa service providers and ensure the correct application of EU rules.**

**2.2.3 Entry: visa exemptions (1,377 enquiries in 2016)**

A significant and persistent problem is the lack of awareness among public authorities concerning the extent of visa exemptions contained in Article 5(2) of Directive 2004/38. This exemption means that if a family member of an EU citizen has a valid residence card, he/she does not need a visa for short stays. The residence card must have been awarded to a family member of a mobile EU citizen, i.e. it excludes residence cards awarded to family members of EU citizens living in their home country. For the visa exemption to apply, a family member would have to travel with an EU citizen or join him/her in another Member State. Some Member States however still require family members to have a valid visa. These create situations whereby family members of EU citizens cannot travel within the EU with their non-EU spouse, even after many years of residence, because the visa exemption is not being recognised.

**Example:** *The Russian spouse of a French national living in Norway cannot get a visa from the Croatian embassy in Oslo to travel with her husband to Croatia, because her Norwegian residence card expired and was in the process of renewal. She was told to apply from her home country, Russia. The fact that she had a receipt of the submitted application for renewal of her residence card was not sufficient, and other factual evidence of her lawful residence in Norway was not accepted.*

**Recommendation:**

**The European Commission should clarify the terms in the text of the Directive that cause legal uncertainty, such as “dependents” or “as soon as possible”. Member States should ensure that national authorities provide clear and sufficient information regarding requirements for visas for third country national family members and regarding residence rights.**



#### 2.2.4 Other recurrent and country specific problems linked to entry and residence

- Problems have been reported in the UK, particularly regarding family members of British citizens seeking to live in the UK after residing in another Member State under the CJEU's *Surinder Singh* ruling<sup>5</sup>. These problems create situations whereby family members of EU citizens cannot move freely within the EU with their EU spouse, even after many years of residence, because the visa exemption is not being recognised.

**Examples:**

*The Philippine wife of a British pensioner residing in Bulgaria was denied her right to apply for a visa free of charge to accompany her husband to the UK for a short visit.*

*The UK Home Office refused to grant a residence card to the non-EU partner of an English citizen who returned to the UK with her and their three children. The argument provided by the Home Office for the refusal was that the couple was not married and that the *Surinder Singh* rule did not apply to unmarried couples.*

- The Directive (Article 7(1)) establishes that, as a condition for residence of more than three months, EU citizens and their family members must have sufficient resources in order not to become a burden on the social security system of the host Member State. There are cases however where the definition of 'sufficient resources' in national legislation does not fully comply with the Directive. For example, French law requires an individual to prove both the amount of resources and their continuity over time with a degree of certainty that is more restrictive than what is intended by the Directive. UK legislation also introduces the 'right to reside' test, which requires EU citizens to be 'qualified persons' under the Directive, i.e. workers or self-employed, in order to access social support. This is discriminatory and contrary to the ECJ decision conferring equality to all EU citizens.

**Example:** *a Polish citizen resident in the UK was refused a permanent residence card because, despite being resident for over 5 years, she had not been economically active during all of that time, and even though she had sufficient resources, she had not had private medical insurance, which the UK authorities require.*

- There is no appeals mechanism against the refusal of entry to EU citizens at airports, ferry ports or land borders in Ireland, which is contrary to Directive 2004/38/EC.

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<sup>5</sup>Case C-370/90: The EU Court ruled that an EU citizen who has gone to another Member State in order to work there and returns to his home country has the right to be accompanied by his spouse and children whatever their nationality under the same conditions as are laid down by (what is now) Directive 2004/38 which governs residence rights.