

# Freedom of Movement in the EU:

## A Look Behind the Curtain

THE MAIN FINDINGS



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## THE MAIN FINDINGS

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## Introduction

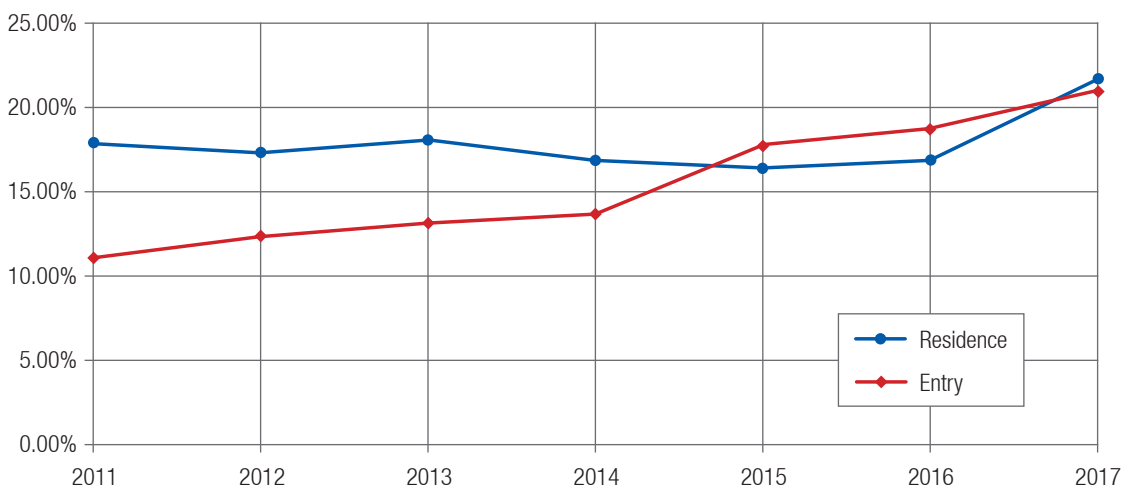
The right to move and reside in another EU country is very dear to EU citizens. The number of EU citizens living and working in another EU country has been increasing steadily, reaching 16 million in 2016<sup>1</sup>. While such a cross border move goes smoothly for many, there is still a large number of EU citizens who face significant difficulties.

The **European Citizen Action Service (ECAS)** has performed research in order to determine what these difficulties are and to establish what action must be taken to enable more EU citizens to move and reside freely in the EU. The findings are included in a comprehensive report, entitled “**Freedom of Movement in the EU – A Look Behind the Curtain**”<sup>2</sup>, outlining the obstacles mobile EU citizens and their family members have reported facing with regard to their rights of **entry** and **residence** in another EU country. This is a summary of the main findings.

The evidence was derived from enquiries that citizens submitted to **Your Europe Advice (YEA)** between January 2015 and June 2017. YEA is an EU advice service on personal EU rights of citizens and businesses which ECAS manages under contract with and on behalf of the European Commission<sup>3</sup>. YEA receives approximately **20,000 citizen enquiries a year**.

**More than 1/2 of all YEA enquiries concern citizens’ entry and residence rights** in the EU and these issues have been of increasing concern to citizens in the last year.

### Residence and Entry Queries as a % of All YEA Queries Received between 2011–2017



<sup>1</sup> Eurostat – Migration and migrant population statistics  
[http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration\\_and\\_migrant\\_population\\_statistics](http://ec.europa.eu/eurostat/statistics-explained/index.php/Migration_and_migrant_population_statistics)

<sup>2</sup> [perhaps include link to the main report here?]

<sup>3</sup> <http://europa.eu/youreurope/advice/>

While not all such enquiries received by YEA indicate problems with citizens' entry and residence rights, approximately 10–15% of them do. Thus, roughly **1,000 enquiries each year bring to light problems** that mobile EU citizens and their families are facing when travelling to, or wanting to reside in, another EU country.

Given how fundamental entry and residence rights are to freedom of movement in the EU, it is important to determine what these obstacles are, why they arise and what can be done to eliminate them.

The research has shown that these obstacles are many and varied, but some stand out because they are recurrent and affect the largest number of mobile EU citizens and their families. This summary provides an outline of the main problems, which all arise as a result of citizens' EU rights not being respected. The five areas where action is most urgently needed are identified below.

## Obstacles to Entry

**E**ntry rights is an issue that has been increasing in importance over the last 6 years. While only 11% of questions received by YEA in 2011 concerned entry rights, by 2017 they had exceeded **20% of all enquiries**. While some enquiries concern the entry rights of EU nationals, **the vast majority relate to the entry rights of non-EU family members**.



### EU nationals

**EU nationals face** few issues when it comes to entering another EU state. This is reflected by the fact that **only 10% of all entry enquiries** concern EU nationals.

**The main problems** that EU nationals have reported facing when travelling within the EU are:

- ◆ Difficulties **obtaining travel documents from their own consular authorities** when they are resident in another EU country.
- ◆ Their **national ID cards not being accepted** as a valid travel document:
  - if they are in paper format – this has affected Greek and Hungarian nationals.
  - expired French ID cards have had their validity extended in France by 5 years without the possibility to obtain new cards – this leads to problems when trying to use the card as a travel document as the card appears to have expired.
- ◆ Dual EU national children have been **denied exit** by their country of nationality when traveling only with a passport issued by the country of their other EU nationality – this has affected Polish children in particular, who have been required to hold a Polish passport in order to be able to exit Poland.



### Non-EU family members

**Non-EU family members** on the other hand have been facing increasing problems. **90% of all entry enquiries** concern the rights of non-EU family members travelling with their EU family member or joining an EU migrant in their host EU country.

The main problems that non-EU family members have reported facing when travelling to, and within, the EU are:

- ◆ Difficulty obtaining clear and correct information on the specific entry rules that apply to non-EU family members from consulates and their visa service providers.
- ◆ A visa is required when it should not be:
  - from non-EU family members travelling in and out of the Schengen area, who hold a family member's residence card issued by an EU country on the basis of EU law;
  - from non-EU family members whose EU residence card will expire less than three months after their intended date of departure from the destination country.
- ◆ Those non-EU family members who do require a visa cannot apply for it in the EU country where they are visiting or even resident – they are told to return to their country of origin and apply for a visa from there.



### **Non-EU family members cannot obtain a visa quickly and for free, despite being entitled to under EU rules.**

Since January 2015, YEA has received **> 500 enquiries** evidencing this problem.

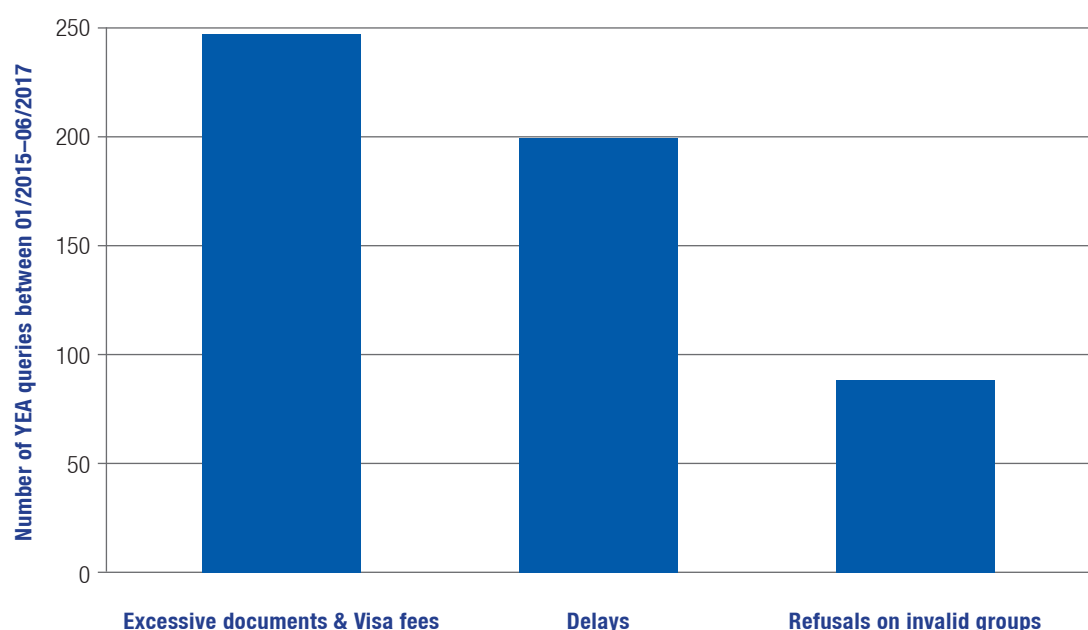
#### **The reasons** for this are:

- ◆ Family members have difficulties in contacting the relevant consulate and face long delays to obtain an appointment;
- ◆ No direct access to the consulate of the destination country is possible – family members are obliged to use the private visa service providers and thus pay the relevant fees;
- ◆ Consular staff and visa service providers are unaware of, or wrongly apply, EU rules (e.g. in order to process the non-EU family member's visa application under EU rules, Swedish consulates require that the EU family member is resident, or intends to reside, in Sweden); and
- ◆ Consulates do not accept that the non-EU national is a “family member” of the EU national (e.g. marriage certificates issued in non-EU countries are not accepted).

**The consequences** of non-EU family members having to obtain a visa on the same terms as other non-EU nationals are:

- ◆ **Family members have to pay visa fees and provide excessive documents** (e.g. proof of accommodation, health insurance, sufficient resources, justification of the purpose of the trip, proof of return travel);
- ◆ **Delays** in obtaining a visa ( >150 enquiries evidencing delays since January 2015 concern **Ireland** – citizens have reported waiting up to 2 years for an Irish visa); and
- ◆ **Family members' applications are refused on invalid grounds** (e.g. visas are denied because the consulate is not convinced the family member will leave the EU before the expiry of their visa).

## Consequences of the Accelerated Procedure not being Applied to non-EU Family Members



### CASE STUDY 1

A British citizen resident partly in Hungary and partly in Cameroon wished for his Cameroonian wife to visit him in Hungary. She applied for a short-term Schengen visa and provided all required documentation as well as a letter from her husband explaining the reason for her application and making express reference that it was made on the basis of EU rules that apply to family members of EU nationals.

The citizen writes:

*“Despite the above, the Cameroonian employee dealing with the visa application insisted that my wife complete the fields on the Schengen Visa application form not required by EU citizen family members, provide evidence of her own employment and bank statement and pay the visa fee. It was apparent that the visa application was being treated as an independent application as a tourist, not as the family member of an EU citizen. The employee appeared to have no knowledge of Directive 2004/38. [...]”*

*My wife was requested to return to the consulate 2 days later to collect her passport. When she collected it, the visa application had been rejected, for the following 2 reasons:*

*‘The information provided about the purpose and conditions of your intended stay was not credible’*

*‘Your intention to depart from the territory of the Member States before the expiry of the visa could not be ascertained’*

*There was also a remark – ‘It is assumed here that a covert family reunification is to take place’ [...]”.*

(YEA enquiry from February 2016)

- ◆ **Original travel documents are withheld** (both those of the visa applicant and the EU family member) – citizens cannot travel during the visa application processing time.
- ◆ **Long term or family reunification visas are required** when a short term visa should be sufficient. The application process for such visas is more cumbersome. This is a particular problem in France and Germany, where family members who enter on a short term visa face difficulties in obtaining residence documents.
- ◆ **Visas are issued with limited duration** when family members have a right to stay with their EU family member for 3 months unconditionally.
- ◆ **Unprofessional conduct by consular staff.**
- ◆ **Detention and delays at the border** because border control officers were not aware of, or did not apply, EU rules.
- ◆ **Denied entry/exit** on grounds that do not relate to public policy/security.

## Obstacles to Residence

**R**esidence rights is an issue that has always been of great concern to citizens in the EU. In 2017, enquiries relating to residence rights in the EU had **exceeded 20% of all enquiries**. Citizens are particularly concerned about the **rights of their non-EU family members**, with such enquiries comprising **over 1/3 of all residence enquiries**.

### Difficulties obtaining a residence document

While for many citizens obtaining a residence document in their host EU country is a fairly simple matter, especially when they are moving to work and have a permanent work contract to show, there are still many who face problems. Those **most likely to face problems** obtaining a residence document for themselves and their non-EU family members are the **self-employed, part-time and interim workers, jobseekers, students**, and the **self-sufficient** (including cross border workers).

Delays in processing applications and issuing residence documents is a major problem:

- ◆ **215 enquiries** were received between January 2015 and June 2017 in which citizens complain about not getting their residence documents in time;
- ◆ **Ireland, Sweden** and the **UK** accounted for > 1/2 of these delays;
- ◆ **Non-EU family members** are the most affected and often have to wait longer than six months for their residence card.

### Restrictive practices by national authorities

While citizens face difficulties exercising their residence rights in many EU countries, the following **three examples of restrictive practices** reported in YEA enquiries **stand out** as they affect many mobile EU citizens.



## 1. The *personnummer* saga in Sweden

Sweden, like many other countries, has a population register. Everyone who is resident in Sweden must be registered in this registry and have a personal identification number, the *personnummer*. The *personnummer* features on all Swedish ID cards and is given to EU citizens in the form of a separate card. **Many EU citizens and their family members are not able to obtain a *personnummer* in Sweden** and without it many essential public and private services are inaccessible.



Since 2015, more than 200 citizens have contacted Your Europe Advice reporting problems they face as a result of not having a *personnummer*. EU migrants and their family members are denied a *personnummer* if:

- ◆ **they cannot show that they will be resident in Sweden for > 1 year** (e.g. job-seekers, interim workers, students);
- ◆ **they are not working and cannot provide an S1 Form** (which is evidence that their home EU country will cover their healthcare costs in Sweden).
  - *The European Health Insurance Card is not accepted.*
  - *Private health insurance, although technically an alternative, is also, in practice, not accepted – there is no private health insurance product available on the Swedish market that can meet the requirements of the Swedish authorities.*



## Catch 22

Many EU countries require proof of residence in another EU country in order to issue an S1 Form. Since EU citizens no longer need to register with the immigration authorities in Sweden, the *personnummer* is the only official proof that they reside in Sweden.

**If EU migrants have no *personnummer* they often cannot get an S1 Form from their home country => no S1 Form, no *personnummer*!**



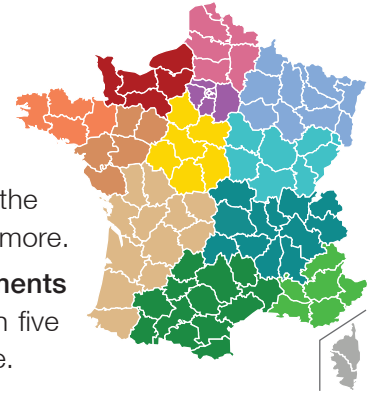
## CASE STUDY 2

An Italian national writes:

*"I have moved to Sweden as a person with sufficient resources. I have given an extract of my savings, a document to the social board saying that I will work as psychologist for a training that I have already found with the unemployment agency, I speak also Swedish, level B. I still miss a S1 document in order to obtain my personal number, this document would show that I am insured. I cannot obtain it in Italy as I am not employed. I do not know how to solve this situation. How can I explain to the tax agency that in Italy it is impossible to obtain it without work? I have the European Health Insurance card but it is not valid for those working permanently here".*

(YEA enquiry from March 2017)

## 2. The residence cards problem in France



There is **no requirement for EU migrants** resident in France **to register** with the national authorities, **but** French law provides that **they can apply for a residence document if they wish** and EU law gives them the right to obtain one after they have lived in France lawfully for five years or more.

**However, French prefectures often refuse to issue residence documents to EU nationals**, even to those who have lived in France for more than five years. The reason given is that EU nationals are not required to have one.



Since the Brexit referendum vote, **UK nationals** have been particularly affected – they have been told to await the outcome of the Brexit negotiations before applying for residence documents.

### BUT

EU citizens are being asked for a residence document in order to:

- ◆ continue receiving **family or disability benefits**;
- ◆ continue receiving the **guaranteed minimum income**;
- ◆ benefit from **other public and private services**.



### CASE STUDY 3

A UK national, who is self-employed in France, writes: *“The Caisse d’Allocation Familiales in France have told me my rights will stop in France as of the 1st April 2016. I received this news today the 29/03/2016 even though the letter is dated the 16 February 2016.*

*They ask for a Titre de séjour’ that the prefecture tells me is not necessary as I am an EU citizen.”*

(YEA enquiry from March 2016)

## 3. The non-recognition of foreign marriage certificates in Spain, France, Italy and Portugal



EU citizens wishing to travel or move to **Spain** with their non-EU family members face difficulties applying for a visa or a residence document for their non-EU family members if their marriage certificate was issued by a non-EU country. The same problem, albeit to a somewhat lesser extent, is encountered by family members applying for entry visas for **Italy** and **France**, and those applying for residence cards in **Portugal**.

### The requirements

In order to recognise a **non-EU marriage certificate**, the immigration authorities or consulates often require that, besides being apostilled and officially translated, the certificate **must be**:

- ◆ **registered** in the country of the EU citizens’ nationality; and/or
- ◆ **recent, not > 3 months old**.

★ *These additional requirements are not always clearly specified on the immigration portals that applicants are likely to consult.*



### The problem

These requirements add an administrative step that is **complicated, costly** and sometimes impossible to fulfil.

Registering a marriage certificate in one's country of origin and obtaining a new, more recent marriage certificate from the non-EU issuing country, **may take several months**. Travel to the relevant country may be necessary and the costs may not be insignificant.

★ *In some cases, citizens report that they are given only **10 days** to provide the relevant documents, otherwise they risk having their application rejected.*

**It may even be impossible** to obtain the relevant documents as some countries (e.g. the UK) do not have a registry of marriages, or in the case of same-sex marriages, because the EU citizen's country of origin does not recognise them.

### The consequences

Non-EU family members whose marriage to an EU national took place outside the EU are not recognised as a "family member", thus:

- ◆ they **cannot obtain a visa quickly and for free** in order to travel to the EU country;
- ◆ if they managed to enter the EU country of destination, they face **significant delays obtaining a residence card**;
  - *in the meantime, they cannot work; and*
  - *they fear that they must return to their country of origin to get a new visa if their residence application cannot be completed before their short term visa expires.*
- ◆ **same-sex spouses are not considered as family members**, even though the EU country of destination recognises same sex marriages.



## CASE STUDY 4

*"I am Hungarian holding also Serbian passport. I am working in Spain. My husband is Serbian (non EU). We got married in Serbia. They told us we need Serbian marriage certificate to be recognised in Hungary in order to get working permit for him in Spain [...]. To get it we need to wait minimum 6 months (information from official Hungarian Ministry web page we got from Hungarian embassy in Madrid), but I know people waiting already 1.5 years with no answer from Hungary.*

*My husband has his date for visa application on June 9. We got it couple of weeks ago and it is extremely difficult to get date. I am afraid that we will not have this document till then and that we will have to ask for a new appointments for him. In that case it would be earliest in August. The other problem is that Spain recognizes certificates for 3 months from issuing date and that we have to apply for appointments and certificate again if we don't get certificate on time.*

*Is there any possibility to apply with Serbian marriage certificate translated and approved in Spanish [embassy] in Belgrade since we are both holding Serbian passport. Is there any other solution for this situation".*

(YEA enquiry from April 2016)

★ *Similar problems are faced by citizens who have **non-EU birth certificates** and must rely on them to prove their family relationship to an EU citizen.*

## Conclusion and Recommendations

Although freedom of movement in the EU has come a long way and EU citizens generally move and reside freely in the EU, obstacles still remain. EU nationals with non-EU family members often see their family members' entry rights not being respected. Moreover, EU nationals wishing to settle in another EU country are not always able to obtain a residence document easily. Those without a long term work contract are more likely to face difficulties. Residence documents are still often made a prerequisite to completing administrative formalities and accessing public and private services. More needs to be done at EU and national level in order to achieve true freedom of movement in the EU.

On the basis of the evidence at hand, the following **FIVE ISSUES** that affect the largest number of mobile EU citizens and their family members are **in most need of action at EU and national level**:

**1. The personnummer problem in Sweden** – this problem has existed for over 10 years. Action taken at EU and national level to date has not been sufficient to remedy it. On the contrary, the increasing number of citizen enquiries that YEA continues to receive on this issue indicate that this problem has worsened since 2015.

### Action needed:

- ◆ **The Swedish tax authority**, which issues the *personnummer*, **should**:
  - **accept the EHIC** as evidence of comprehensive healthcare cover; and
  - **relax the excessive requirements for private health insurance** so that private health insurance policies taken out by citizens can, in practice, be accepted as evidence of comprehensive healthcare cover in Sweden.

### Alternatively:

A system should be put in place whereby EU migrants can contribute to the Swedish national healthcare system in a proportional way and be able to rely on this as evidence of comprehensive healthcare cover without having to provide an S1 Form or any other evidence of healthcare cover.

- ◆ **Swedish legislation** (§3 of the Swedish Population Register Law 1991) that provides for the obligation to register in the population registry if one intends to reside in Sweden for at least one year, **should be amended to allow for the possibility to register immediately, or at least within 3 months**. This would bring the concept of residence in the Swedish legislation in line with that in EU law (Directive 2004/38).

### Alternatively, if Swedish legislation remains unaltered,

- the Swedish tax authority should accept a letter of intent from the citizen as evidence that they are likely to be resident in Sweden for at least a year; and
- the temporary personal number, currently issued to those who can demonstrate an intent to stay in Sweden for six months, should be issued in the same format as the regular *personnummer*, to ensure it is accepted by the IT systems of public and private service providers and should be provided to all temporary residents irrespective of their intended length of stay.

**2. The residence card problem in France** – this has been a problem for approximately 3-4 years and has worsened since the Brexit vote, with UK nationals particularly affected.

**Action needed:**

- ◆ an investigation must be carried out to determine the reason behind the prefectures' frequent refusal to issue residence documents to EU nationals, despite French and EU law allowing EU nationals to obtain such documents. (Citizens' enquiries received by YEA have not provided an indication of the possible reasons behind this policy). The prefectures should be instructed to comply with the relevant French and EU legislation; and
- ◆ the Caisse d'Allocations Familiales (and any other government agency applying the same policy) should be instructed to cease making the payment of benefits conditional upon presentation of a residence document. This is a breach of EU law (Article 25 of Directive 2004/38), thus enforcement action might be considered by the European Commission, if necessary.

**3. The marriage certificate problem in Spain, Italy, France and Portugal**

**Action needed:**

Positive action is required at EU and national level to ensure that:

- ◆ **only an apostille stamp (or legalisation) and a certified translation should be required** for a non-EU marriage certificate (or other public document) to be accepted as proof of a family link when non-EU family members apply for entry visas or residence cards;
- ◆ **any additional requirements**, aiming to establish whether a marriage is genuine, **should only be imposed in cases where there is reason to suspect abuse**, not as a general policy.

**4. Excessive delays in issuing residence cards in Sweden, Ireland and the UK**

This is a persistent problem that exists in several EU countries, but it is most serious in Sweden, Ireland and the UK, which account for over half of all citizen enquiries sent to YEA where this issue has been flagged.

**Action needed:**

While the situation in the UK should be dealt with in the specific context of Brexit, **positive action at EU level is necessary in order to enforce EU law in Sweden and Ireland, ensuring that residence cards are issued to non-EU family members no later than six months from the date of application.**

**5. Excessive delays in issuing entry visas to family members of EU nationals in Ireland**

This is a serious and persistent problem, which accounts for 3/4 of all YEA citizen enquiries flagging the problem of delays in obtaining a visa. According to the Irish Naturalisation and Immigration Service, the current processing time for most visas is 8 weeks. However, family members of EU nationals have reported significantly longer delays.

**Action needed:**

Positive action is needed at EU and national level to find a solution that strikes a balance between preventing abuse and ensuring that EU free movement rules are respected so that **family members of EU nationals are issued entry visas on the basis of an accelerated procedure.**





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