



YOUR EUROPE ADVICE ANNUAL TRENDS

2017

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Your Europe Advice (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 Commission¹. It consists of a team of 60 lawyers who, between them, can provide responses in all 24 official EU languages and are familiar with both EU and national laws in all EU countries.

In 2017, YEA legal experts replied to **19,042 enquiries**. These enquiries give an insight into the problems experienced by EU citizens when exercising their right of free movement.

ECAS produces quarterly feedback reports based on the most interesting cases² handled by YEA. These reports are used to highlight ongoing issues encountered in the Internal Market.

The YEA annual trends are based on the 2017 figures extracted from the database of all enquiries and the 2017 quarterly feedback reports. YEA uses a classification system that groups issues together under various topics.

1. Nature of the enquiries

In 2017, the most important topics in terms of numbers were: social security, entry procedures and residence, which confirm trends observed since 2015.

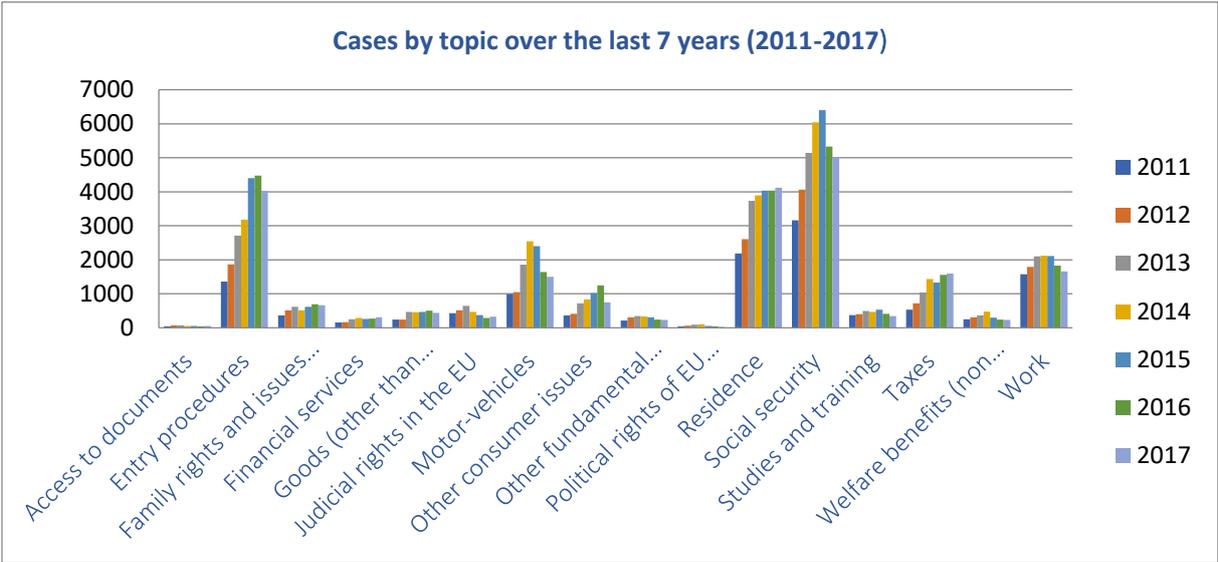


Figure 1: Source YEA Database

Social security as it touches upon health care and financial benefits is, and has always been, the most important concern for EU citizens who choose to exercise their free movement rights in the EU.

¹ Further information on Your Europe Advice can be found here: http://europa.eu/youreurope/advice/about_en.htm

² A YEA case is considered “interesting” if it represents 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.

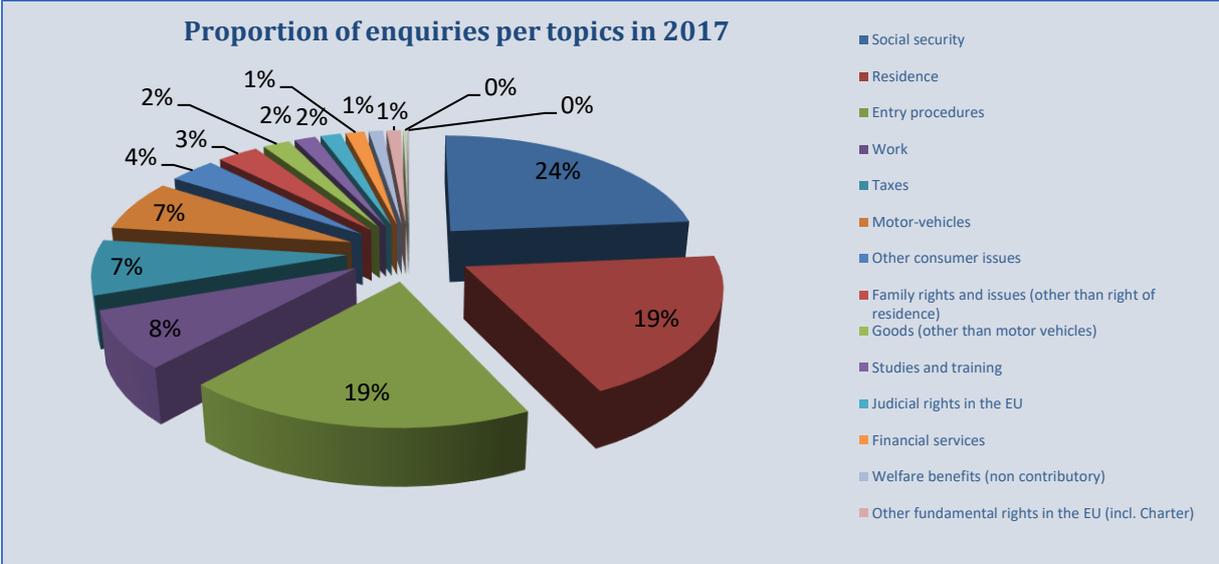


Figure 2: Source YEA Database

In 2017, YEA received enquiries from citizens of all 28 EU countries, as well as Norway, Iceland and Switzerland, and also from third country nationals who are family members of EU citizens.

14.8% of all enquiries concerned the United Kingdom. This is partly attributable to Brexit. By comparison in 2014, only 7.5% of all YEA enquiries were United-Kingdom related:

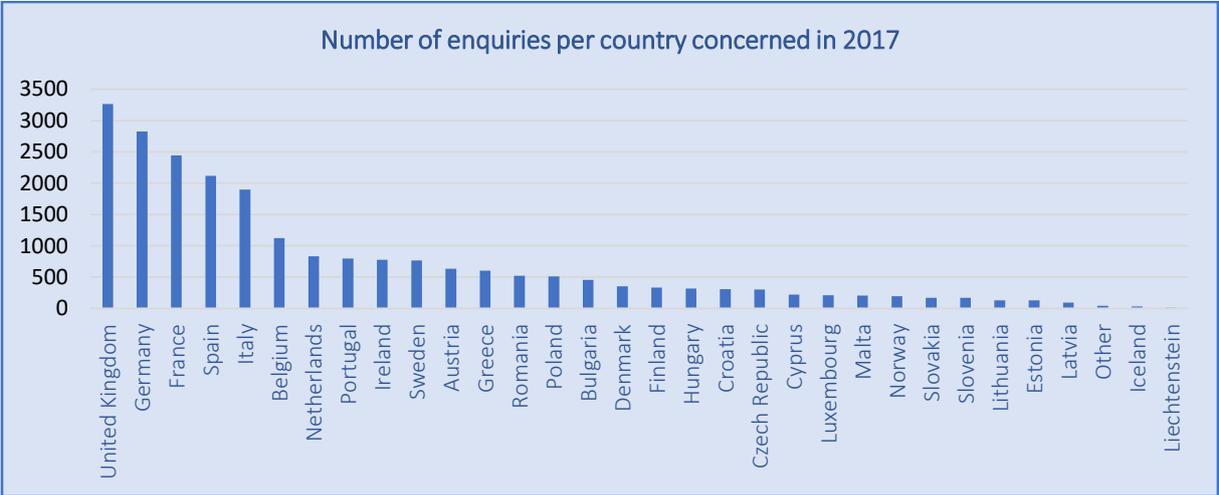


Figure 3: Source YEA Database

2. The five main issues in 2017

Each topic is divided into sub-topics. In 2017, the most important sub-topics in terms of numbers were the same as those in 2016:

1. Residence – family rights: 1,879 enquiries
2. Entry – long-term/short-term visas: 1,750 enquiries
3. Social security – country of insurance: 1,356 enquiries
4. Entry – visa exemptions: 1,342 enquiries
5. Social security – old-age pensions: 1,016 enquiries

2.1 Social Security

2.1.1 Country of insurance (1,356 enquiries in 2017)

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 in which a citizen pursues gainful activity is competent for social security coverage. Specific rules are provided for certain categories of workers, such as civil servants, who can be insured in the Member State of the administration that is employing them, and workers who are employed or self-employed in several EU countries. However, the complexity of the rules, lack of information and training of the national authorities, and 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, live in one country and work in another, or retire in a different country. Some Member States refuse to accept responsibility and declare that they are not competent even when they are. Others declare themselves competent when they are not. It is a recurring issue and concerns most EU countries. The Court of Justice of the EU 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 to free movement in the EU³. Yet, citizens continue to experience problems in maintaining social security coverage when they move from one country to another. Sometimes, because of new technologies and “tele working” it is even more difficult to determine which country is competent.

Examples:

A Danish citizen working as a civil servant for a university in the Netherlands could not obtain social security coverage because the Dutch social security institute advised him that it was not possible to be covered in the Netherlands. However, Regulation (EU) No. 883/2004 specifically provides that civil servants shall be subject to the legislation of the Member State of the administration of employment.

During a trip to Italy, an Italian pensioner residing in Belgium experienced health problems which required care and prevented her return to Belgium. Neither the Belgian nor the Italian social security authorities would reimburse her health expenses as they were unable to agree on the citizen’s residence.

A German citizen worked from home in Germany for a Finnish company. Although she was subject to German social security under Regulation (EC) No. 883/2004, the Finnish company insisted on paying Finnish contributions and incorrectly considered her to be a posted worker.

³C-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

Recommendations: Administrative cooperation between national authorities must be improved. Regulation (EC) No. 883/2004 on the coordination of social security schemes provides for this. National authorities must be trained on which social security rules apply when citizens move within the EU.

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

2.1.2 Old-age pensions (1,016 enquiries in 2017 – increase by comparison with 2016)

In 2017, the number of enquiries relating to old-age pensions increased more than 9%, which is partly due to the uncertainty associated with Brexit and citizens being afraid that they will miss out on their pensions even though they made contributions.

Article 6 of Regulation (EC) No. 883/2004 recognises the principle of aggregation of periods. This means that in assessing the right to receive benefits in one Member State, the competent authorities must consider 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 members of his/her family reside in another Member State, i.e. a Member State other than the one in which the institution responsible for providing benefits is situated. A persistent lack of cooperation between national authorities, despite the obligation of cooperation imposed by the Regulation, sometimes has serious consequences for the lives of citizens. They often face problems and delays when claiming pension rights they have acquired by working in different EU countries and are sometimes left without income. This is a common issue encountered in most EU countries.

Example: *In April 2017, when she reached the age of 65, a retired Romanian citizen, who was in receipt of an old-age pension in Romania, lodged an application for an old-age pension from Spain where she had worked for four years. As required, she submitted the application with all necessary documents to the pension authority in the country where she was living: Romania. After six months, she had not received a response. Consequently, in October 2017, she applied again for an old-age pension from Spain. To date, she still has not received a response from either Romania or Spain.*

Recommendations: Pensioners need to receive good quality information, from both the sending country before departure and the receiving country upon and after arrival. The obligation of communication and cooperation between Member States as stated in Article 76 of Regulation (EC) No. 883/2004 should be reinforced.

2.1.3 Other recurring and country specific issues linked to social security:

- YEA received cases showing that the Romanian authorities do not recognise proof of health insurance contributions in another Member State (such as the S1 form). Citizens are not even asked to prove that they were subject to another Member State's social security system. The Romanian authorities do not accept portable documents issued by other Member States. In practice, this means that some Romanian citizens are obliged to pay their health insurance contributions twice. The Romanian authorities also refuse to issue the relevant forms to EU citizens.

Example: *A Romanian posted worker in Italy could not obtain the A1 form from the competent Romanian authorities. Without this form, she cannot obtain the necessary document for enrolment in the Italian health insurance system. She finds herself in a vulnerable situation, bearing in mind that she is pregnant and needs medical supervision and care.*

- YEA continues to receive cases concerning the right of residence which, under Directive 2004/38/EC, is subject to proof of health insurance to ensure that citizens do not become a burden on the social he social assistance system of the host Member State during their period of residence. While this proof can be demonstrated by several means (health insurance card, private health insurance...), some Member States refuse to recognise any form other than the S1 form⁴. For many years, this has been an issue in Sweden, but it is becoming a recurring issue in Bulgaria, Denmark, France, Romania, Germany and the United Kingdom as well.

Example: *A Dutch national, whose right to reside in Sweden was registered by the Migration Agency, could not obtain a personal number because she did not have comprehensive health insurance. The Swedish Tax Authority deemed her private health insurance insufficient, stating that only public health insurance is acceptable and requested the S1 form. In the Netherlands, the social security system is based on private insurance. The Dutch national was refused registration in Sweden.*

Recommendations: **The EHIC (European Health Insurance Card)⁵ should be recognised in every EU country as evidence of comprehensive healthcare coverage. Private health insurance taken out by citizens should be accepted as evidence of comprehensive healthcare coverage.**

- In 2017, YEA again received many enquiries reporting excessive delays in processing family benefit claims and payments of these benefits in Germany. This 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 Czech citizen living in the Czech Republic and working in Germany has not received any information about her child benefit application in Germany despite having applied for it a year and a half ago. Notwithstanding numerous calls and complaints, she has not received any reply or feedback.*

2.2 Entry and Residence rights

2.2.1 Residence: family rights (1,879 enquiries in 2017)

Under Directive 2004/38/EC, EU citizens' family members are also included in the scope of 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 there). A family member is defined as: a spouse or registered partner, children under 21 or those who are older than 21 but still dependent (e.g. students supported by their parents) 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

⁴ 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.

⁵ The European Health Insurance Card (or EHIC) is issued free of charge and allows anyone who is insured, or covered, by a statutory social security scheme of the EEA countries and Switzerland to receive medical treatment in another Member State free of charge or at a reduced cost, if that treatment becomes necessary during their visit (for example, due to illness or an accident), or if they have a chronic pre-existing condition which requires care such as kidney dialysis.

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). In some Member States, there is a general lack of information on the right of residence for family members. Citizens experience a number of bureaucratic impediments to getting their rights recognised. These include having to prove a durable relationship or 'legalise' marriage certificates to obtain a residence card (there is no definition of a durable relationship), having to prove they have sufficient resources, language requirements to obtain a residence certificate, or having their passport retained by national authorities until they have obtained a residence certificate. Restrictions have also been placed by Member States on their own nationals returning home with family members after exercising free movement rights. These are common issues encountered in most EU countries.

Examples: *A UK citizen and his Chinese wife were previously resident in Cyprus. They applied for permanent residence for the wife in the UK. The immigration authorities requested excessive documentation: birth certificates, affidavits signed before the courts that the couple were celibate before getting married (which were required at the time of the initial application for a residence card alongside certificates of celibacy). The citizen is also being asked to provide evidence of sufficient resources going forward, i.e. not just during the initial five-year period.*

The Parisien Préfecture de Police provided incorrect and irrelevant information to the non-EU family member of a Romanian national, suggesting that he should apply for a long-term visa (instead of the residence card for which he sought to apply), even though he had been studying in France since 2014 and is now in a registered partnership in France.

Recommendations: Member States should ensure that national legislation is clear and detailed enough to guarantee the attainment of the Directive's objectives. Where necessary, national laws should be supplemented by adequate administrative guidelines providing clear instructions on the application of the Directive. All Member States should harmonise the definition of "durable relationship" and should ensure proper training of their national administration.

2.2.2 Entry: long-term/short-term visas (1,750 enquiries in 2017 – increase by comparison with 2016)

Article 5(2) of Directive 2004/38/EC obliges EU Member States to provide every opportunity for family members of EU citizens to obtain the necessary visas for short or long-term stays, free of charge through an accelerated procedure.

As the right to be issued with an entry visa is determined by the family link with an EU citizen, Member States may only require the presentation of a valid passport and evidence of a family link (also dependency, serious health grounds and durability of the partnership, where applicable). No additional documents, such as proof of accommodation, sufficient resources, an invitation letter or return ticket, are required.

Unfortunately, the enquiries received by YEA show that family members of EU citizens continue to experience difficulties in obtaining visas for several reasons. For faster processing of applications not made in person, consular services may contract out the service to an external provider. These service providers ignore the rules of the Directive - the procedures are long, extra documentation is required and it is not free of charge. However, applicants should always have the option to deal with the consular services directly and personally, if they prefer. This is a common issue encountered in most EU countries.

Example: *An Italian citizen was recruited by a British university as a researcher. His wife, a Ukrainian national living in Italy, wanted to join him and applied for an entry visa to the United Kingdom. The UK authorities refused to issue the visa claiming they were not given enough evidence of the genuineness of the marriage. After some months had passed, the wife submitted a second application for a visa, but the UK authorities have not yet revised their decision. The Italian citizen is frustrated because his wife cannot join him in the UK and they are spending a lot of money, energy and time travelling back and forth.*

Recommendations: 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 correct application of the EU rules.

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.

2.2.3 Entry: visa exemptions (1,342 enquiries in 2017)

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 of an EU Member State, he/she does not need a visa for short stays in another EU country. 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. However, some Member States still require family members to have a valid visa. This creates situations where 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 acknowledged.

Examples: *The non-EU spouse of a French national, travelling with her from France to Spain, was denied boarding in Paris due to not having a Spanish visa, even though she held a permanent residence card issued by the UK, as a family member of a French citizen.*

An Italian citizen lives in Italy with his Colombian wife who was granted a "Residence card of a family member of a Union citizen" by the Italian authorities. The couple wished to travel for few days to Ireland and contacted the Irish embassy in Italy in order to check which documents they would need to enter that country. The non-EU citizen was told that she should apply for a visa and the couple was requested to provide several documents, such as evidence of financial resources.

Recommendation: The terms in the text of the Directive that cause legal uncertainty, such as: "dependents", "Unreasonable burden" or "as soon as possible" should be clarified. Member States should ensure that national authorities provide clear and sufficient information regarding requirements for visas for third country national family members and residence rights.

2.2.4 Other recurring and country specific problems linked to entry and residence

- There are no requirements for EU mobile citizens residing in France to register with the national authorities, but French law provides that they can apply for a residence document if they wish. 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 residence documents. However, EU citizens are being asked for a residence document to continue receiving family or disability benefits, the guaranteed minimum income and other public and private services (such as opening a bank account).

Example: *A Romanian citizen had been living in France for more than 10 years. He was employed in Paris. The citizen suffered an accident and was unable to work for two months. He applied for unemployment benefits and other financial assistance but, to be granted benefits, he was required by the competent French authorities to present a European citizen's residence card (presumably a carte de séjour, "Citoyen UE/EEE/Suisse"). He faces a catch 22 situation. The prefecture is reluctant to issue the document, even though the authorities incorrectly insist that unemployment and other benefits are conditional upon possession of a residence card.*

- 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* ruling⁶. 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.

Example: *The UK Home Office refused to grant a residence card to the Ukrainian partner of an English citizen who returned to the UK with her and their three children after living in another EU country. The argument advanced 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.*

Recommendation: *The guidance given to Member States on how to apply the *Surinder Singh* rules to their own returning nationals and their family members should be elaborated upon and updated.*

- 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 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, to access social support. This is discriminatory and contrary to the CJEU decisions conferring equality on 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 for the entire period even though she had sufficient resources. In addition, she had not held private medical insurance required by the UK authorities.*

- There are still no appeal mechanisms against the refusal of entry to EU citizens at airports, ferry ports or land borders in Ireland. This is contrary to Directive 2004/38/EC, the notification of the decision refusing entry must specify the appeal court or administrative authority and the

⁶Case 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.

person concerned must have access to judicial and/or administrative redress procedures of any refusal of entry decision.