



YOUR EUROPE ADVICE ANNUAL TRENDS

2018

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Your Europe Advice (YEA) is an EU legal advice service available to citizens and businesses. The service is managed by the European Citizen Action Service (ECAS) under contract with and on behalf of the European Commission¹. It consists of a team of 59 lawyers who provide responses in all 24 official EU languages and are familiar with both EU and national laws in all EU Member States.

In 2018, YEA legal experts replied to **19,194 enquiries**. These enquiries provide 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 2018 figures extracted from the database of all enquiries and the 2018 quarterly feedback reports. YEA uses a classification system that groups issues together under various topics.

1. Nature of the enquiries

In 2018, the most important topics in terms of number of received enquiries were: entry procedures, social security, and residence. For the first time in the history of the service, social security was not the most common topic. Entry is now the most frequent topic enquired about, representing 22% of all enquiries. YEA received more enquiries than previous years related to Consumer rights and Free movement of Goods and a substantial proportion/number of these enquiries are from Businesses.

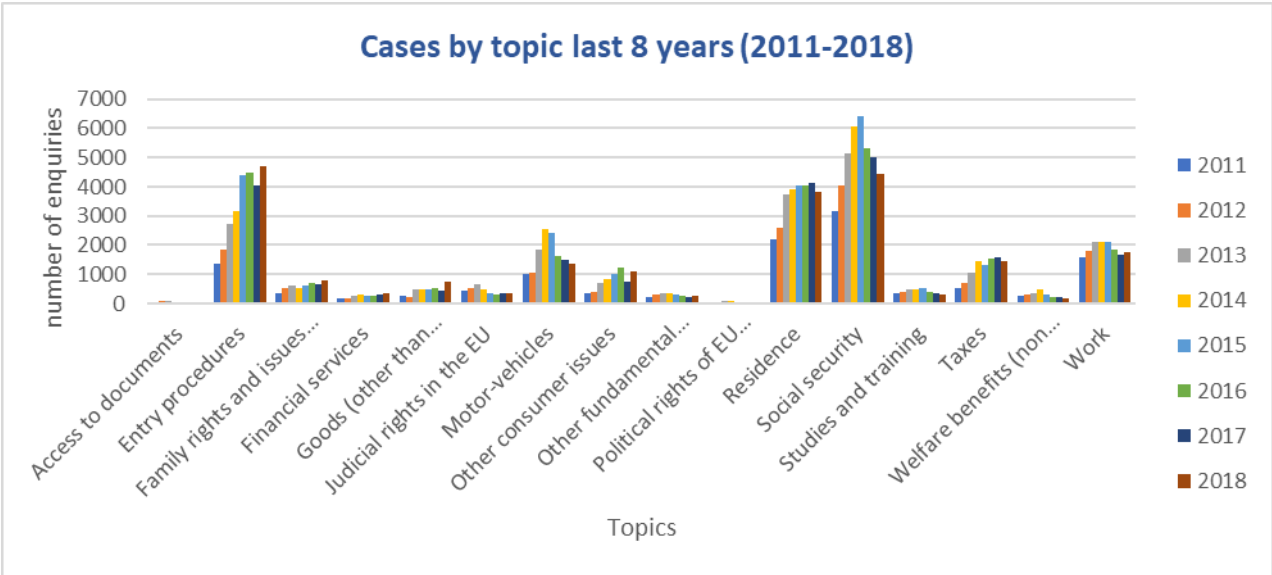


Figure 1: Source YEA Database

YEA received enquiries from citizens from all 28 EU countries; from Norwegian and Icelandic citizens; and from third country nationals who are family members of EU citizens. Most enquiries were

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 obtain necessary information in order to exercise their rights.

received from third country nationals. This may explain why Entry was the most common topic dealt with by YEA in 2018.

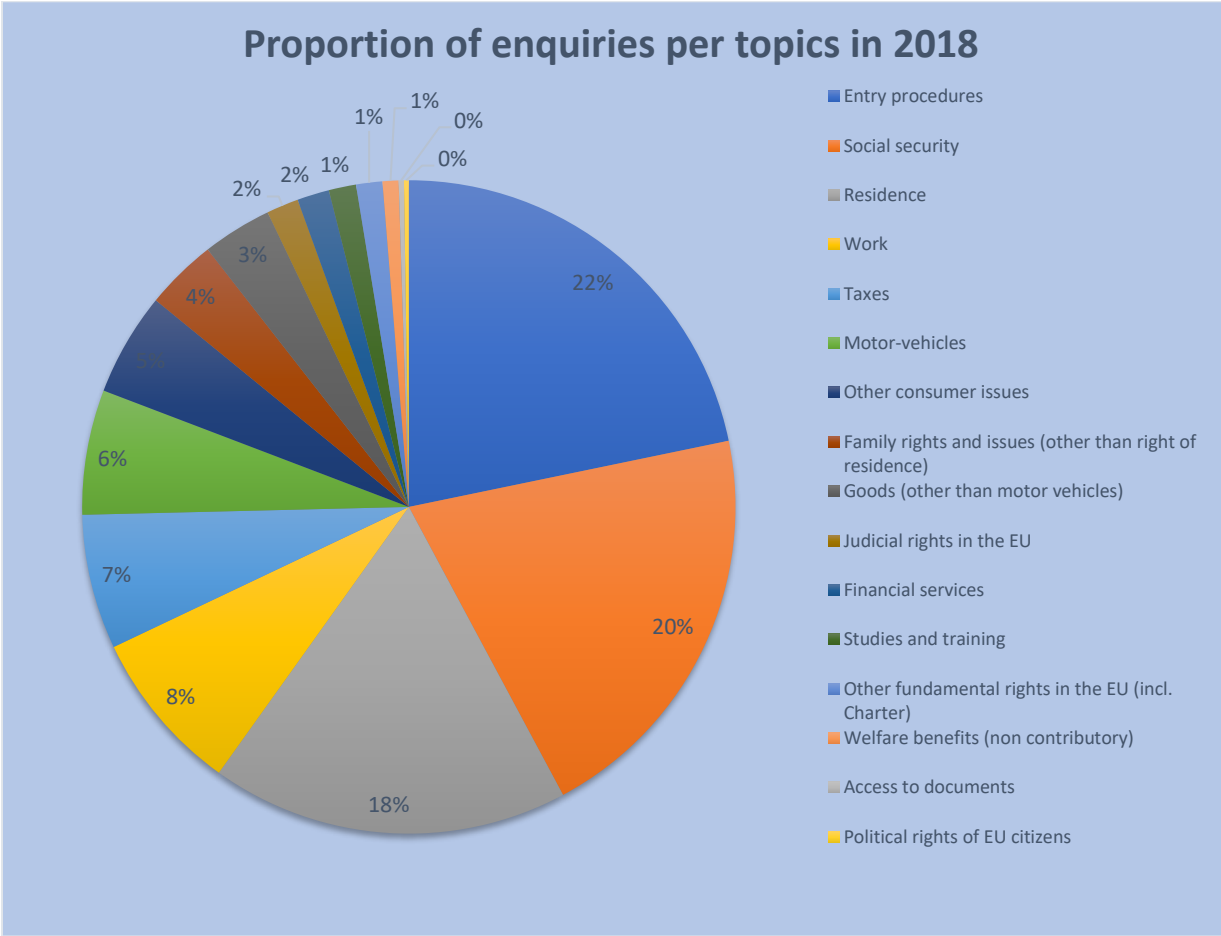


Figure 2: Source YEA Database

The enquiries received related to all 28 Member States, as well as Norway, Iceland and Liechtenstein. 14.5% of enquiries received in 2018 concerned the United Kingdom. This was partly due to Brexit and to the large number of third country nationals who are already in the EU, but would like to move to the UK.

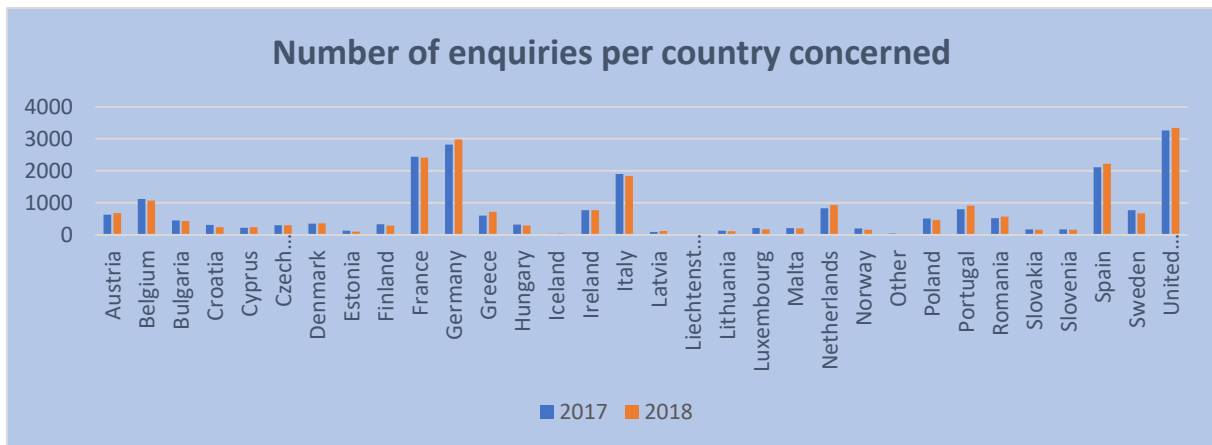


Figure 3: Source YEA Database

2. The five main issues in 2018

Each topic is divided into sub-topics. In 2018, the most important sub-topics have not altered significantly compared to previous years, but the sequence is different:

1. Entry – long-term/short-term visas: 2,193 enquiries
2. Residence - family rights: 1,932 enquiries
3. Entry – visa exemptions: 1,573 enquiries
4. Social security – country of insurance: 1,286 enquiries
5. Entry – others: 1,068 enquiries

2.1 Entry and Residence rights

2.1.1 Entry: long-term/short-term visas (2,193 enquiries in 2018 – increase by comparison with 2017)

Article 5(2) of Directive 2004/38/EC obliges EU Member States to support 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 (e.g. 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 a 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 outsource the service to an external provider. These service providers ignore the rules of the Directive - the procedures are long; extra documentation is required; and the service is not free of charge. This is a common issue encountered in most EU countries. Applicants should always have the option to deal with the consular services directly and personally, if they prefer.

Examples:

The German consulate in Cyprus refused to issue a visa to a family member of a German national who wished to travel to Germany for a short visit with his German spouse. The reason given for the refusal was that the family member was unable to present an EU family member residence card to prove their intention to leave Germany prior to expiry of the visa. This is contrary to the ruling of the CJEU in *Surinder Singh* and *McCarthy*, where the court said that the Directive 2004/38/EC should be applied by analogy to returning EU nationals and their family members.

A British national, his British daughter and his Filipino wife to whom he has been married for 13 years, planned to travel to Greece. The family resided in Cyprus where the husband worked. The wife held a valid European residence permit. She applied for a Schengen visa to facilitate a family multi-city trip across the EU, which would commence in Greece. The Greek embassy advised that the wife would not require a Schengen visa. Under normal circumstances, she could travel with her husband throughout the EU on presentation of their marriage certificate, if requested. However, in this case, the embassy wrongly advised that since the marriage certificate was more than 10 years old, it was no longer valid for use.

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.

2.1.2 Residence: family rights (1,932 enquiries in 2018)

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 who may be included under national legislation. This category includes dependent relatives (e.g. siblings), dependent household members and unmarried or 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 citizen, or non-EU citizen). In some Member States, there is a general lack of information on the right of residence for family members. Citizens experience numerous bureaucratic impediments to getting their rights recognised. These include having to prove a durable relationship (for which no definition has been provided), or 'legalise' marriage certificates to obtain a residence card. Applicants for residence cards may also have to prove they have sufficient resources, or may be subjected to language requirements. They may have their passport retained by national authorities until issue of the residence card. 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:

The Irish authorities refused to grant a residence card to the Chinese spouse of a British national on the grounds that the couple did not have any children and had no shared assets. The couple could provide ample proof that they had been in a relationship for more than four years.

A Portuguese citizen and his Brazilian girlfriend were required by the Finnish authorities to demonstrate that they had been residing together for two years to prove a durable relationship. The couple had been together for a period of three years and had lived together for the past year. The Finnish authorities did not undertake an extensive examination of their personal circumstances to justify their refusal of residence to the Brazilian girlfriend.

Recommendations:

Member States should ensure that national legislation is clear and sufficiently detailed to guarantee attainment of the Directive's objectives. If necessary, national laws should be supplemented by adequate administrative guidelines providing clear instructions on the application of the Directive. The definition of "durable relationship" should be harmonised for the benefit of Member States' authorities and national administrations should be trained to appropriately apply the rules.

2.1.3 Entry: visa exemptions (1,573 enquiries in 2018)

A significant and persistent problem is the lack of awareness among public authorities concerning the visa exemption provided under Article 5(2) of Directive 2004/38/EC. This exemption means that if a family member of an EU citizen has a valid residence card from an EU Member State, they do 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 them in another Member State. However, some Member States still require family members to have a valid visa even though they are already in possession of a valid residence card. 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

A British citizen living in Spain with his South African wife and their British children wanted to visit their family in the UK at Christmas. The wife held a Spanish residence card. Contrary to the ruling of the ECJ in the *McCarthy case*, C-202/13, the UK Immigration told the couple that the wife would need a visitor visa costing 175 GBP.

A German citizen planned a short trip to London with her Peruvian husband. The latter was in possession of a German permanent residence card. The couple enquired whether the husband required a visa to enter the United Kingdom. The British Consulate in Dusseldorf advised that they could not give any information on visa requirements she needs to look up in the web portal.

Recommendation:

Terms in the text of the Directive causing 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.

2.1.4 Entry – others: 1,068 enquiries

YEA received enquiries demonstrating the difficulties experienced by EU citizens caused by the uncertainty of Brexit. British citizens want to know the conditions under which they will be allowed to enter a European country while citizens from other EU countries want to know the documentation required to enter the UK.

Examples:

In 2018, the Embassy of France in Uzbekistan attempted to charge for visas issued to the parents of a British citizen on the basis that Embassy staff alleged that the United Kingdom had already left the customs union and family members of British citizens were now required to pay for visas.

A Russian citizen married to a British citizen living in France enquired whether family members of EU citizens could still travel to the UK on presentation of their residence card, without the need for a visa after 29th March 2019. Conversely, a citizen queried whether family members of EU citizens would still be able to travel to other EU countries on presentation of their UK residence cards without the need for a visa after 29th March 2019.

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

- There are no requirements for EU 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 requested to present 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 British married couple were interviewed for permanent residence cards by the French local authorities. The husband received his 10-year permanent card after six weeks. However, the wife never received hers. The French authorities eventually advised that all applications for permanent residency had been put on hold until after Brexit.

- Problems have been reported in the UK, particularly regarding family members of British citizens seeking to return to the UK after residing in another Member State under the CJEU’s *Surinder Singh* ruling³. 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.

³Case 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 those laid down by (what is now) Directive 2004/38 which governs residence rights.

Example: A British national was living in Ireland but working in Northern Ireland. She sought to return to take up residence in the UK with her non-EU spouse. Her husband was refused an EEA Family Permit because the wife had been working in Northern Ireland and had not, according to the UK authorities, moved her centre of life to Ireland.

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.

- Directive 2004/38/EC (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 employs 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 Romanian citizen had been working under an indefinite work contract in Italy since 2002. His family consisted of 4 family members and he had an income of 10.800 euro per year. As his income was less than 14.000 euro per year, the Italian authorities refused to issue him a certificate attesting the effectiveness and reality of his residence in Italy. Consequently, he was unable to obtain ID cards for his two daughters, when their IDs expired in September 2018. His daughters have been in Italy for 14 years and attend school there.

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

2.2 Social Security

2.2.1 Country of insurance (1,286 enquiries in 2018)

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 security 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 their protection when exercising their right to free movement in the EU⁴. 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.

Example:

A Greek citizen and his Bulgarian wife reside in Greece. The Bulgarian wife does not work and is covered by her husband's insurance. Nonetheless, the Bulgarian authorities charge her for health care in Bulgaria, simply because she is a Bulgarian national. She has been requested to present a document proving that she is covered by her husband's insurance. The Greek authorities advised the husband that they do not issue such documents and requested that the Bulgarian authorities liaise directly with them to obtain confirmation.

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 in the applicable social security rules 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.

2.2.2 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 and EHICs to EU citizens.

Example:

A Romanian citizen who had lived and worked in Germany applied for German unemployment benefit and sought to transport the benefit to Romania. However, the Romanian national authorities did not return the necessary forms to the German competent authority. This failure by the national authorities to cooperate with each other left the citizen without income.

A student up to the age of 26 and domiciled in Romania has the right to obtain an EHIC there. However, Romanian students who are studying in another Member State cannot obtain an EHIC and are obliged to obtain private health insurance cover in the host Member State where they are studying. Romanian law discriminates between Romanian students studying in Romania and Romanian students studying in another Member State.

⁴C-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

A Hungarian citizen worked both in Hungary and in Romania. When he reached pensionable age in Hungary, he submitted an application for old-age pension to the Hungarian authorities. The Hungarian pension institution forwarded his claim to its Romanian counterpart in April 2016. After almost two years, the Romanian institution has not yet adopted any decision on the citizen's pension claim.

- 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 assistance system of the host Member State during their period of residence. While this proof can be demonstrated by several means, e.g. health insurance card, private health insurance, some Member States refuse to recognise any form other than the S1 form⁵. For many years, this has been an issue in Sweden, but it is also becoming a recurring problem in Bulgaria, Denmark, France, Romania, Germany and the United Kingdom.

Example:

A German citizen who previously lived outside the EU was unable to obtain a personal number. Comprehensive insurance was not acceptable. The Swedish authorities insisted on presentation of a Form S1. The citizen was unable to obtain this as he was never subject to the European social security system.

A Romanian pensioner required proof of residence in Sweden to obtain a Form S1 from Romania. To obtain proof of residence in Sweden from the Swedish Tax Agency (Skatteverket), a personal number is required. This is issued only if the person holds a Form S1. The citizen contacted the competent authority in Romania. They are unable to advise him how to proceed. They will not issue the Form S1 without proof of residence in Sweden which should not be required.

Recommendations:

The EHIC (European Health Insurance Card) should be recognized in each EU country as evidence of comprehensive health care cover.

Private health insurance taken out by citizens should, in practice, be accepted as evidence of comprehensive health insurance.

⁵ 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.