

YEA Annual Trends 2020



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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 respond to citizens in all 24 official EU languages and are familiar with both EU and national laws in all EU Member States.

YEA legal experts replied to 25,281 enquiries which, despite representing a decrease of 9% compared to the previous year, makes 2020 the year with the second highest number of enquiries received in the last decade. These enquiries provide an insight into the problems experienced by EU citizens and businesses regarding their personal EU rights, including freedom of 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 2020 figures extracted from the database of all enquiries and the 2020 quarterly feedback reports. YEA uses a classification system that groups enquiries together under various topics.

The “practical conclusions and suggestions from ECAS” are ECAS’ personal opinions and do not necessarily correspond to the European Commission’s views.

1. Nature of the Enquiries

In 2020, the COVID-19 crisis had an enormous impact on the movement of citizens and businesses within the EU. Citizens faced obstacles imposed not only by national administrations, but also by private entities. Many citizens were well informed but unable to find any remedy for their situation.

In 2020, the most important topics, in terms of the number of received enquiries were social security, residence and entry procedures. YEA received a higher number of social security enquiries (23%), mainly because of the COVID-19 crisis and Brexit. There was also an increase in questions relating to the free movement of goods and enquiries linked to consumer rights.

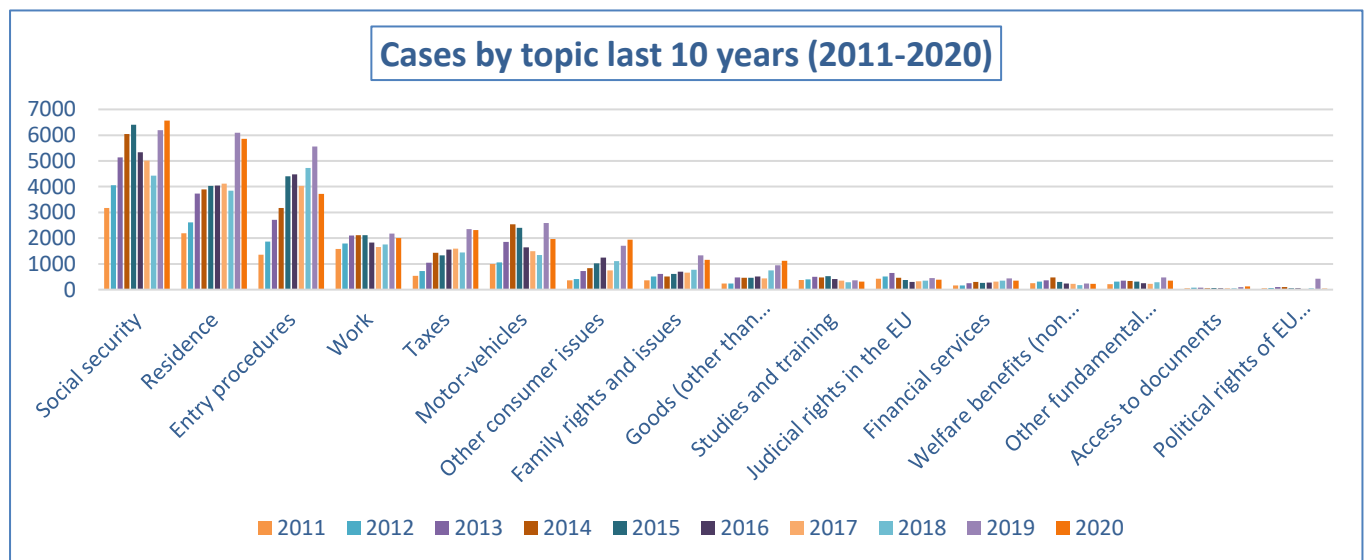


Figure 1: Source YEA Database

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.

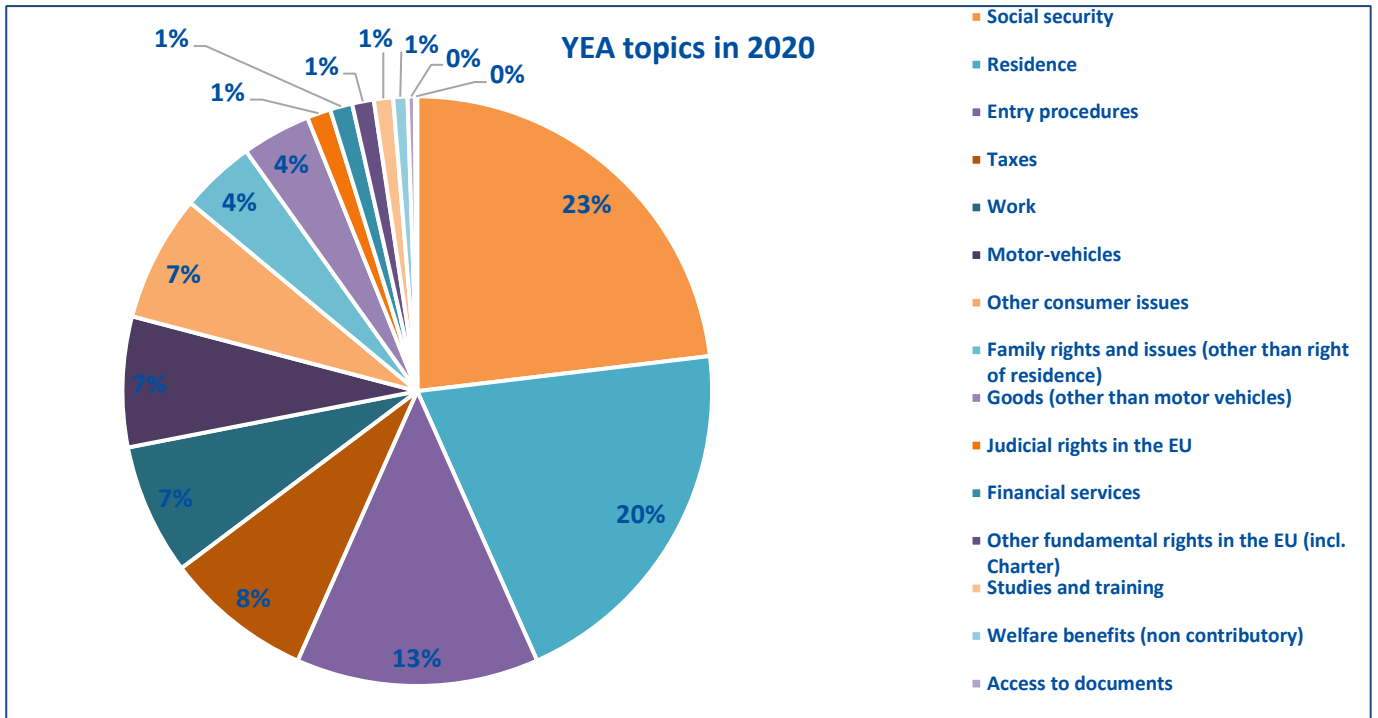


Figure 2: Source YEA Database

YEA received enquiries from citizens from all 27 EU countries, from British, Icelandic, and Norwegian citizens as well as other third country nationals who are family members of EU citizens. YEA received fewer questions from British citizens compared with previous years but many more from Italian and German citizens.

The enquiries received related to all 27 Member States, as well as United Kingdom, Norway, Iceland, and Liechtenstein. YEA received fewer enquiries related to the UK compared with 2019. In 2020 the UK was the focus of the fifth highest number of enquiries, while more enquiries were related to Germany, Spain, France, and Italy.

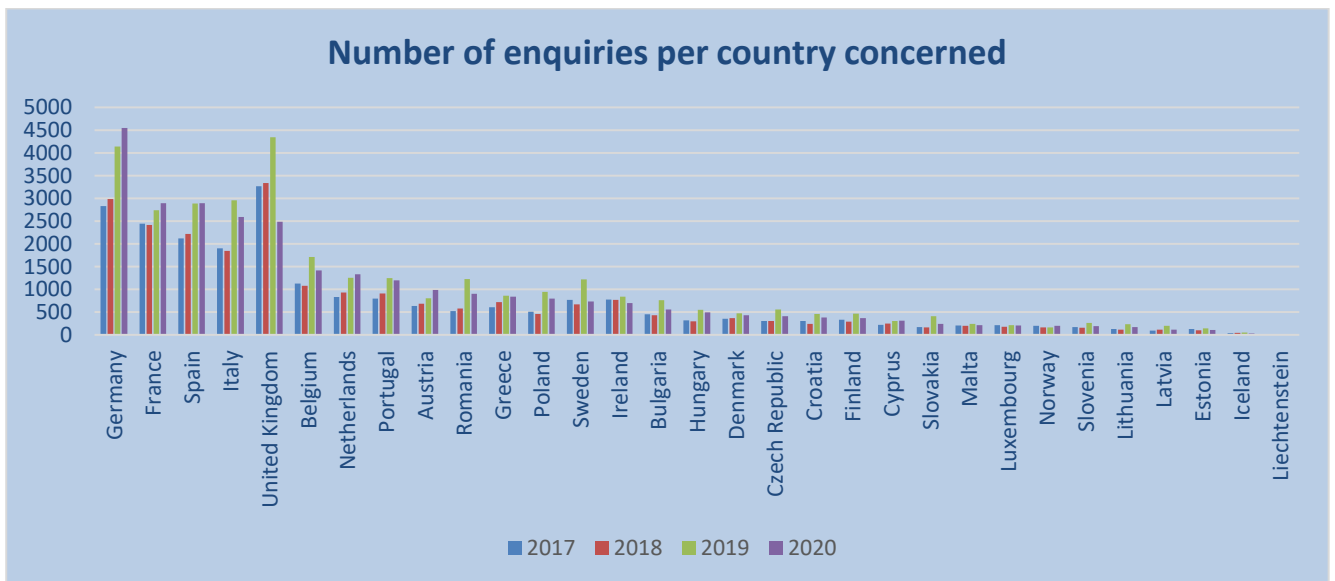


Figure 3: Source YEA Database

2. The five main issues in 2020

Each topic is divided into sub-topics. In 2020, three out of the five most important sub-topics related to social security:

1. Residence - family rights: 2,672 enquiries
2. Social security – country of insurance & general management: 2,461 enquiries
3. Social security – Health care, sickness, or maternity: 1,944 enquiries
4. Entry- others: 1463 enquiries
5. Social security -Old age benefits: 1,313 enquiries

2.1 Entry and Residence rights

2.1.1 Residence: family rights (2,672 enquiries in 2020, representing a decrease by comparison with 2019)

Under Directive 2004/38/EC, EU citizens' family members are included in the scope of the right of free movement if they are dependents of an EU citizen. The right is limited to the host 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 the dependent parent(s) (of the EU citizen or a partner). There is a second category of extended family members who are not included in the definition of family members under this Directive, and who therefore do not enjoy an automatic right of entry and residence in the host Member State. They should be examined by the host Member State on the basis of its own 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 the residence card issues. 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. In 2020, Brexit has also had a bearing on the questions received. Citizens wanted to know the implications and future impact of Brexit and how they could take measures to protect their acquired rights and their family members' acquired rights (permanent residence). The COVID-19 crisis has further complicated and delayed resolution of these issues.

Examples:

An American citizen accompanied her Dutch husband to Greece where she attempted to register as an EU family member but was refused registration. She was told that she needed an independent reason to register her presence in Greece.

Due to the COVID-19 crisis, the Irish authorities have accumulated delays in issuing residence cards to non-EU family members of EU nationals. The Ecuadorian spouse of a Polish national did not receive a residence card

and was issued with the temporary residence document (a Stamp 4 letter ³) while his residence card application was pending. Prospective employers refused to acknowledge his right to work on the basis of this letter and insisted on presentation of a residence card.

A French citizen living in UK since 2008 is married to a Bangladesh citizen. They have 2 children born in the UK. The wife experienced considerable delay with her spousal application to her permanent residence card, which was pending for more than 11 months.

A Belgian citizen and his Ugandan wife previously lived in Bulgaria where she was in possession of a Residence card of a family member of a Union Citizen. When the couple attempted to return to Belgium, the Belgian authorities insisted that the wife apply for a D-visa and would not accept her residence card to facilitate her entry into the country.

Practical conclusions and suggestions from ECAS:

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. It should also be clear for the administrations that non-EU family members are not required to leave the host Member State and re-apply for an entry visa simply because the residence card application process is taking too long.

2.1.2 Entry - others (1,463 enquiries in 2020 - equivalent to 2019)

In 2020, enquiries which were under this category were mainly related to COVID-19 and Brexit .

On 16 March 2020, in an effort to contain the spread of the virus, the European Commission recommended that Member States apply coordinated restriction of non-essential travel from third countries into the EU. This recommendation was followed by all Member States. The EU closed its external borders until mid-May. Cross-border travel within the EU was limited and permitted only under certain exceptions. Most Member States then imposed 14-day-quarantine periods for those arriving onto their territory, including their own nationals, to try to limit the spread of the virus.

In accordance with Directive 2004/38/EC, Member States may restrict entry of EU citizens, other than their own nationals, into their territory on public health grounds. These grounds include diseases such as COVID-19 which have epidemic potential as defined by the World Health Organisation. Member States must at all times comply with the safeguards laid down in Directive 2004/38/EC, in particular, the principles of proportionality and non-discrimination. EU citizens were severely affected. No clear information was available. Citizens required information about their rights to cross EU borders (rules, documents, testing etc.). They complained about the lack of harmonisation between Member States. These difficulties come in addition to the uncertainty of Brexit. British citizens wanted to know the conditions under which they would be allowed

³ Stamp 4 refers to the stamp number, or immigration status, given to an individual with permission to reside in Ireland. It is issued to people on work visas/work authorisations, to refugees, to people with Irish Born Child residency and those with long-term residency status. Once a person has been granted Stamp 4 status by the Irish Department of Justice, he or she is to report to their local Garda National Immigration Bureau in order to receive the physical card, or "Certificate of Registration". The card shows the holder's Stamp 4 status, as well as their photograph and other personal details.

to enter an EU Member State, while citizens from other EU countries wanted to know the documentation required to enter the UK.

Examples:

Hungary banned all foreign citizens, including EU nationals who did not have residence in Hungary, from entry into the country from 1 September 2020 due to the COVID-19 pandemic. As a result, the German partner of an Hungarian citizen could not visit her in Hungary and their right to family life was infringed.

A Slovakian pensioner living in the Netherlands wished to return to Slovakia to be close to her family during the COVID crisis but, without proof of permanent residence there, she was not allowed to enter the country.

A UK national residing in the UK and commuting regularly to Italy to join his Italian wife and children, wished to stay for more than 90 days in Italy with his family to avoid travelling during COVID-19 lockdown measures, but he did not want to find himself in an illegal situation after the 31/12/2020.

Practical conclusions and suggestions from ECAS:

The COVID-19 crisis deserved an EU coordinated response and not a series of unilateral actions from each EU Member State. EU citizens' rights should be safeguarded even more in times of crisis when some are particularly vulnerable.

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

In 2020, a significant number of citizens living and working legally in the United Kingdom wanted to know the implications and future impact of Brexit and how they could take measures to protect their acquired rights. British citizens resident in other Member States queried the consequences of Brexit on their rights in their host Member State. Similar issues were raised by British nationals returning home with family members after exercising free movement rights.

Examples:

A British national studying in Poland was unsure about his right to remain in Poland after 31 December 2020.

A British national (unmarried partner of a Belgian citizen) enquired about her right to maintain permanent residence in Spain after the end of the transition period. She queried also whether she should register her partnership to maintain her right of residence.

An Italian citizen had lived in the UK since 1965 and wished to know how he could retain his right to reside in the UK. He appears to have been given contradictory information from the Italian Consulate.

A UK national asked whether the Withdrawal Agreement and the EFTA Separation Agreement protect the rights of UK nationals who work in Sweden while residing in Norway as well as UK nationals who work in Norway while residing in Sweden.

Administrative practices are often clearly in conflict with EU law. Excessive and worrying delays and formalities were again reported in obtaining residence. Additional documentation to support applications for residence cards was required. France and Italy continue to refuse to issue a certificate of registration or a residence card to EU citizens. Some administrations question whether the conditions of the right to stay have been met and treat both EU citizens and their non-EU family members as though they are newcomers. Delays and excessive administrative formalities were reported. The COVID-19 crisis has intensified these issues.

Example:

The French authorities delayed for more than fifteen months the renewal of the residence card of a non-EU (Cap Verde) daughter of a Portuguese national legally residing in France since 2014.

A Dutch citizen residing in Italy since 2012 had registered with the municipality of Siena. He applied for a permanent residence certificate from the municipality to register with the regional health service. However, he was told that he was not entitled to the certificate because he did not meet the residence requirements. The citizen had sufficient resources and had health insurance for five consecutive years.

Practical conclusions and suggestions from ECAS:

Many obstacles to entry and residence rights to EU nationals and their non-EU family members existing today are caused by existing gray areas in the Citizenship Directive. A new Communication would provide up-to-date guidelines to the Member States and would contribute to improving the implementation of the Directive at the national level for the benefit of EU citizens.

2.2 Social Security

Social security has always been one of the most important topics. In 2020, YEA received proportionately more enquiries related to this topic. The ongoing COVID-19 pandemic is challenging for social security systems as healthcare, unemployment insurance and pensions, among others, are under pressure. National social security systems play a leading role in supporting insured persons, healthcare professionals and the economy at large. In an EU context, the coordination of social security systems has also been impacted.

2.2.1 Country of insurance and general management (2,461 enquiries in 2020, representing an increase by comparison with 2019)

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 employing administration 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. This 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 and encounter a persistent lack of co-operation between national authorities.

In 2020, COVID-19 and Brexit have exacerbated existing problems.

Due to the COVID-19 crisis, many employees had no option but to resort to remote or tele-working. Employers should exercise care when permitting employees to tele-work as this may have serious consequences in terms of which Member State's social security and employment laws will apply. As a result of this unexpected and complicated situation, it was difficult for citizens to find information and to understand which country was competent.

A number of enquiries show that while Brexit negotiations were ongoing, the situation regarding the law applicable to social security coordination after 31 December 2020 remained unclear.

Examples:

A German citizen living in Munich and working in Denmark commenced working from Munich due to COVID-19. When he sought advice on the necessary forms and where to submit these to ensure his social security rights while working remotely, both the German and Danish authorities failed to advise him. The Danish authorities directed him to apply in Germany while the German authorities advised him to apply in Denmark.

An Italian citizen entered the Netherlands with a view to finding employment there. On the day after he commenced working, his employer's business closed as a result of the COVID-19 lockdown. The citizen had not yet signed an employment contract. He was unable to return to Italy and did not know which country was competent for social security.

A British citizen working and residing in Germany, queried if he would continue to be considered as a frontier self-employed person after the end of the Brexit transition period and the impact on his social security rights.

A British citizen lived and worked in Germany and other EU countries since 2013. He was unsure about his health insurance entitlements post-31 December 2020. He is a musical theatre performer working in Norway at the time of the enquiry, travelling between Germany and Norway while living in Germany. He paid tax and social insurance. He was aware that he would not be able to rely on his European Health Insurance Card (EHIC) card from 2021 and queried his options.

Practical conclusions and suggestions from ECAS:

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.

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

2.2.2 Health care, sickness, or maternity (1,944 enquiries in 2020)

The provisions of Regulation (EC) No. 883/2004 are based on the notion that insured persons and their family members are to receive health insurance benefits and maternity or paternity benefits regardless of their circumstances and where they reside. EU citizens have the right to access healthcare in any EU country and to be reimbursed for care abroad by their home country. Decision 2003/751/EC introduced the European Health Insurance Card (EHIC), which enables EU citizens to effectively access health care in other Member States.

A significant number of enquiries received by YEA reported obstacles concerning accessing healthcare and receiving sickness or maternity benefits. Citizens experienced issues with recognition and coverage of the EHIC; lack of knowledge of the applicable legal framework; and difficulties in obtaining the S1 form when moving to another Member State. These obstacles and delays can have a negative impact on citizens' mobility and their health and can also place them in difficult financial situations. These recurrent issues have been aggravated by COVID-19 due to the lockdown. Some EU citizens became trapped in a country which was not necessarily competent for their healthcare. Some were concerned about access to healthcare in the event that they became ill and also about their entitlement to sickness benefit.

Examples:

A Slovak national working in Germany was required to remain in Slovakia for two weeks in COVID-19 quarantine. He queried who would pay his sickness benefits. He was advised by the Slovakian authorities that he was not insured in Slovakia. The German authorities advised that as the quarantine was declared by Slovakia rather than Germany, they were not competent for the benefits.

An Italian citizen was residing in Belgium. His mother, who lives in Italy, had come to visit him. However, following the lockdown, she was unable to return to Italy. She suffers from an illness which requires injections. She went to the pharmacy and to the hospital to obtain treatment, but both the pharmacy and hospital refused to consider her European Health Insurance Card.

Recommendation:

Raise awareness of patients' rights to reimbursement (independently of possession of an EHIC) for cross-border healthcare to ensure that everyone who needs care knows his/her options.

2.2.3 Social security -Old age benefits (1,313 enquiries):

In 2020, YEA received more enquiries related to old age pension. This is partially attributable to the uncertainty of Brexit. Citizens were afraid that they would miss out on their pensions even though they made contributions.

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 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 the members of his/her family reside in a Member State other than

that 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 may have serious consequences on the lives of citizens who experience problems and delays in claiming the pension rights they have acquired in different EU countries and are sometimes left without income. This is a common issue encountered in most EU countries.

Examples :

- Most of the Brexit related enquiries were “basic” and were mainly requests for information:

An Italian citizen who worked for 23 months in the UK, queried the future of his pension accumulated in the UK and whether it would be added to his Italian pension. He asked whether this would happen automatically or if he should contact the Italian social security authority (INPS).

A dual UK/German worker who lived and worked exclusively in the UK queried whether Brexit would impact her pension and healthcare when she retired after 31 December 2020 and went to live in Germany.

A British citizen, previously employed in the UK and France and now residing in Malta, was concerned about the impact of Brexit on social security rights, in particular his pension.

- Other old age benefits enquiries:

An Irish citizen worked in Italy, Spain, Ireland and the UK. She is now 69 years old and while she receives pro rata pensions from the UK and Ireland, she is unable to receive any pension payment from either Italy or Spain. She sought assistance in enforcing her pension rights under EU law.

The Belgian pension administration refused to recognise a French registered partnership (*PACS, pacte civil de solidarité*) for the purpose of grant of a survivor's pension even though a Belgian partnership (*cohabitation légale*) would be recognised for the purpose of grant of this pension.

Recommendations:

Pensioners need quality information both from 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 by the European institutions.

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

As in previous years, 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 health insurance contributions twice. The Romanian authorities also refuse to issue the relevant forms and EHICs to EU citizens.

Example:

A Romanian student studying in the Netherlands between 2017-2020 did not benefit from healthcare in Romania, her country of origin, or in the Netherlands as a student, because she did not have an EHIC issued in Romania. She had to purchase private medical insurance. She is now experiencing a similar discriminatory situation as a master's student in Sweden. Romanian authorities continue to refuse health insurance cover to students undertaking university courses in another Member State.

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 has become a recurring problem in Bulgaria, Denmark, France, Romania, Germany, and the United Kingdom.

Examples:

A Belgian citizen wanted to reside and work in Sweden. However, as she was not insured in Belgium, because she was living outside the EU, she had no Form S1 proving that she was insured in accordance with Regulations (EC) Nos. 883/2004 and 987/2009. She was unable to find private insurance acceptable to the tax agency.

An Italian citizen who previously resided in Portugal, tried to settle in Sweden and was unable to obtain a personal number. She had secured temporary employment and would be given a provisional number (*samordningsnummer*). With this provisional number, she was unable to register with the commune, or have access to health care, or open a bank account. She would like to buy an apartment in Sweden but cannot do so without a personal number and a bank account.

Recommendations:

The EHIC (European Health Insurance Card) should be recognised in each EU country as evidence of comprehensive healthcare 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.



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