

YEA Annual Trends 2021



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Introduction

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 Commission.¹ 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 19,002 enquiries during 2021 which represents a decrease of 24% compared to 2020, it could be due to the COVID-19 crisis, which had a serious impact on the movement of citizens and businesses within the EU.

The 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 2021 figures extracted from the database of all enquiries and the 2021 quarterly feedback reports. YEA uses a classification system that groups enquiries together under various topics.

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

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.

1. Nature of the Enquiries

In 2021, the COVID-19 crisis had an enormous impact on the movement of citizens and businesses within the EU. A variety of restrictions to free movement of persons were introduced during the COVID-19 outbreak, such as closure of borders, border checks, lockdowns, quarantines, etc. These measures had the consequence of either preventing or hindering the exercise of free movement of persons.

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 2021, 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 (26%), mainly because of the COVID-19 crisis which had an impact on all the European social security systems and Brexit as the situation regarding the law applicable to social security coordination after 31 December 2020 remained unclear for many EU and UK citizens.

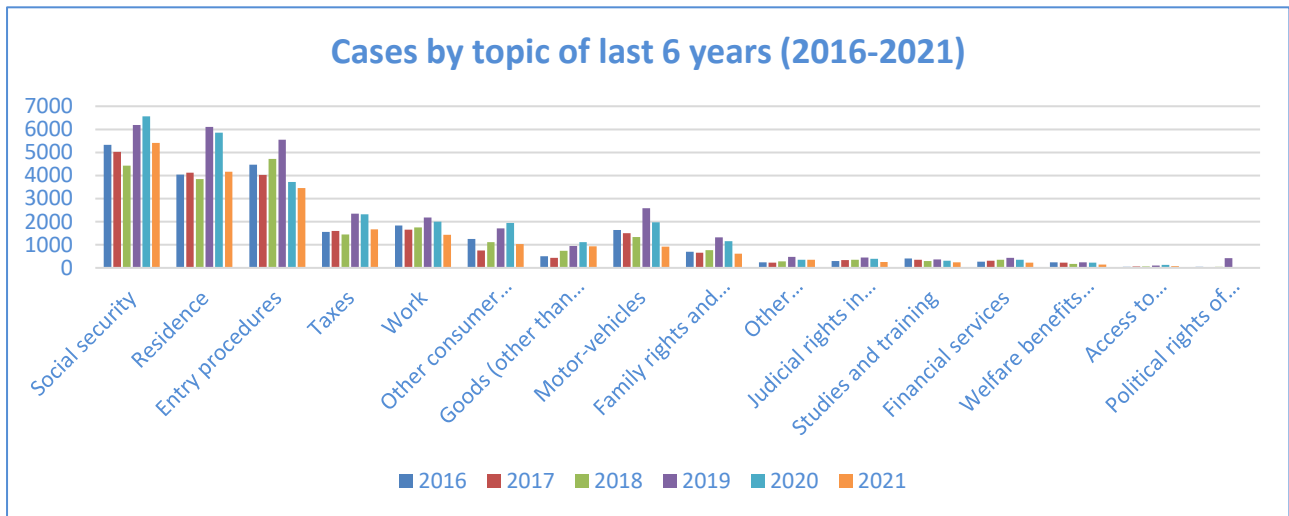


Figure 1: Source YEA Database

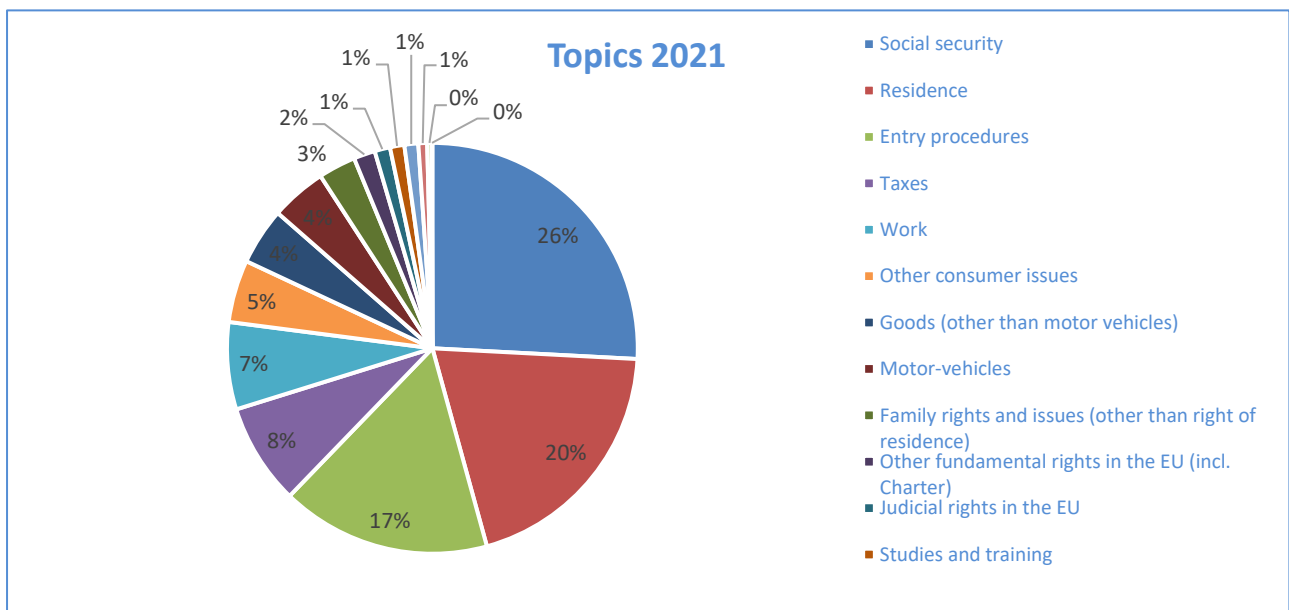


Figure 2: Source YEA Database

YEA received enquiries from citizens from all 27 EU countries and from Norwegian, Icelandic and third country family members of EU citizens, while 11% of enquiries were from third country nationals. YEA received fewer questions from British citizens (-6%) compared to previous years due to Brexit. There was a significant increase in enquiries from Italian (10% compared to 2020) and German (8% compared to 2020) citizens.

The enquiries received related to all 27 Member States, as well as Norway, Iceland and Liechtenstein. YEA received less enquiries related to the UK compared to 2020 (the UK is now in 7th position compared to 5th position last year) a logical consequence of Brexit. There was an increase in the number of enquiries related to Germany, Spain, Italy and France.

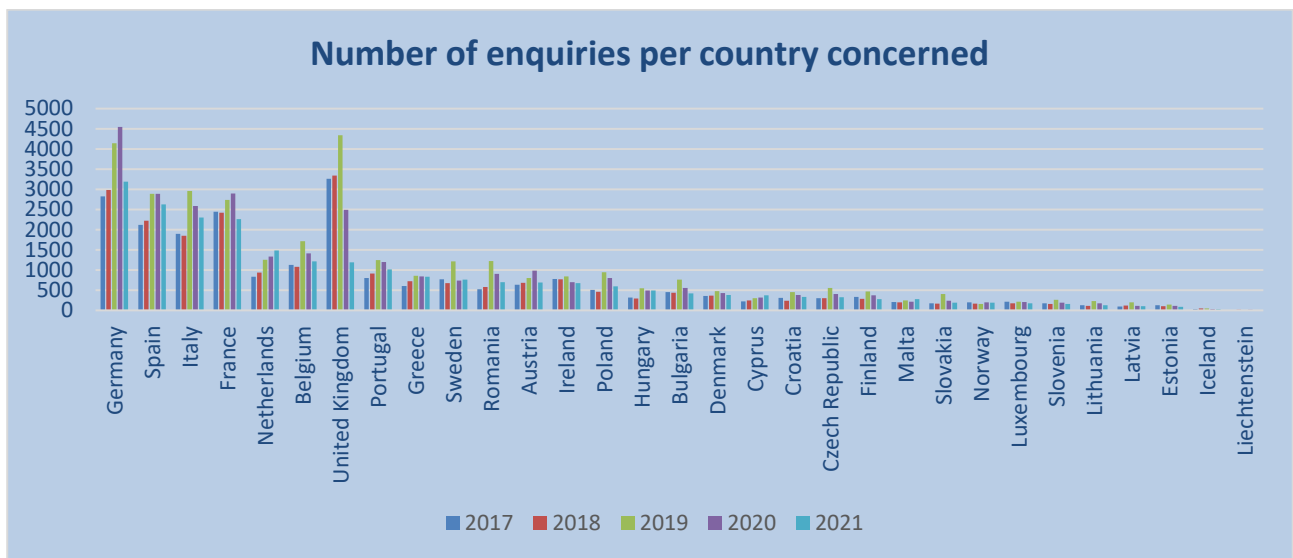


Figure 3: Source YEA Database

2. The five main issues in 2021

Each topic is divided into sub-topics. In 2021, three out of the five most important sub-topics related to social security:

1. Social security – country of insurance & general management: 2,062 enquiries
2. Residence - family rights: 1,839 enquiries
3. Entry- others: 1644 enquiries
4. Social security – Health care, sickness, or maternity: 1,454 enquiries
5. Social security -Old age benefits: 1,253 enquiries

2.1 Social Security

Social security has always been one of the most important topics. In 2021, 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. Tele-working and digital work, although not new phenomena, grew exponentially during the COVID-19 pandemic and lockdown restrictions. The pandemic also impacted workers' mobility.

2.1.1 Country of insurance and general management (2,062 enquiries in 2021)

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 EU.³ 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.

During 2021, COVID-19 and Brexit exacerbated existing problems.

The COVID-19 crisis has caused far-reaching changes over a very short period. Public health measures designed to reduce the spread of COVID-19 included the active encouragement or obligation to tele-work for those workers in a position to do so. This often resulted in a change in the applicable social security legislation.

A number of enquiries show that the situation regarding the law applicable to social security coordination after

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.

31 December 2020 remained unclear for many EU and UK citizens and relevant information was difficult to locate.

Examples:

A Polish citizen living in Poland, close to the Czech border, was working in Czechia. She used to commute to work at least twice a week. Due to the COVID-19 pandemic, she was required to tele-work from Poland, her Member State of residence. She was concerned that this requirement might impact her social security insurance, but was unable to find relevant information.

A Finnish company recruited a Belgian citizen based in Germany. The citizen was unwilling to move to Finland because of the COVID-19 situation and proposed to work remotely from Berlin. The Finnish employer was required to pay social security contributions to Germany. However, they were unable to obtain relevant information from the competent German authorities.

The French authorities refused to accept a Form S1 issued to a British national resident in France since 2004 who was a beneficiary of the Withdrawal Agreement. The local authorities were not trained and were unable to advise on the consequences of the Withdrawal Agreement.

An Italian citizen who had been working in the United Kingdom began working remotely in Italy during the Covid-19 pandemic. She was unable to return to the United Kingdom before the end of the transition period and queried her social protection status.

A Spanish citizen living in Spain previously worked in France and Belgium and was in receipt of a pension from both countries. He was unable to obtain information as to which country was responsible for providing healthcare. The authorities in each country provided contradictory advice.

A pregnant Belgian citizen with employment contracts in Poland and Belgium, was residing in Belgium with her partner. She paid double contributions and was affiliated to both the Polish and Belgian systems. She was unable to find information on the competent country to pay her maternity benefits.

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.

2.1.2 Health care, sickness or maternity (1,454 enquiries in 2021)

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 healthcare in other Member States.

As in previous years, 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 Form S1 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. YEA received a significant number of enquiries related to Covid-19 vaccinations. Some citizens experienced serious difficulties in obtaining vaccinations when they stayed in another country. Many citizens had difficulties obtaining EU Digital COVID certificates.

Examples:

A Hungarian citizen living in Hungary was in receipt of a pension from Austria where she was insured. She wished to have her vaccination in her country of residence, but was refused by the Hungarian authorities and was unable to travel to Austria due to the COVID situation.

An Italian citizen living in the Netherlands received his first COVID vaccination in Italy and the second in the Netherlands. Neither the Dutch nor the Italian administration would issue an EU Digital COVID certificate to her.

A pregnant Slovak national insured in Spain got stuck in Slovakia due to the pandemic and was refused healthcare under her EHIC. Medical care related to pregnancy is necessary healthcare, provided her stay in the host country was not deliberate to receive benefits-in-kind.

An Italian citizen became ill during his stay in France when visiting his daughter. As he was unable to return to Italy for treatment during the pandemic, he was treated in a French hospital for 20 days and then underwent rehab in a separate clinic. After his death, his daughter received a bill for 25.000€ even though her father had presented his EHIC prior to treatment.

Recommendation:

Raise awareness among citizens and national authorities about how to use a EHIC to obtain healthcare cover and 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 their options.

2.1.3 Social security – Old-age benefits (1,253 enquiries):

In 2021, YEA received many enquiries related to old age pension. This was partially attributable to the consequences of Brexit. Citizens were afraid that they would miss out on their pensions even though they had made contributions. In general, this is an area where the lack of cooperation between Member States is particularly visible.

Article 6 of Regulation (EC) No. 883/2004 recognises the principle of aggregation of periods, which means that when competent authorities are considering a claim for benefits in one Member State, they must consider periods of insurance, employment, self-employment and residence in another Member State. Some enquiries demonstrate 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 Brexit related enquiries were “basic” and were mainly requests for information:

A British citizen living in the UK had worked in Germany from 2010 to 2013, paying social security contributions. He queried if his pension contributions in Germany were lost or whether they might be recognised in the UK. The citizen experienced difficulties in obtaining information on the consequences of the Withdrawal Agreement following the departure of the UK from the EU.

A Belgian citizen worked for 20 years in Belgium, 7 years in the UK and 3 years in France. He was incorrectly advised by the Belgian pension service that the years worked in the UK were ineligible for a pension.

A dual Irish/British national living in the UK in receipt of a UK pension was considering moving to the Netherlands in the future. He queried which country would be responsible for his healthcare costs under the EU/UK Trade and Cooperation Agreement.

- Other old age benefits enquiries:

An Austrian citizen who previously worked in Bulgaria was experiencing problems in receiving her pension regularly from Bulgaria. At three-month intervals, she was required to obtain confirmation from Vienna that she was still alive. This was last confirmed on 5th May 2021 and forwarded to the Bulgarian authorities. However, she was still awaiting payment of her pension in the final quarter of 2021.

An Italian citizen worked for 2 years in Germany and then in Italy for more than 41 years. He wished to apply for a pension in Italy but the local Italian social security institution was unsure how to treat the 2 years worked in Germany.

A retired Finnish citizen was residing in Finland. He claimed pensions from Belgium and France. The Finnish authorities contacted the Belgian and French social security bodies. However, six months later, neither had responded.

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.

2.1.4 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 Form S1). 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 retired Romanian citizen was residing in Belgium. She received a CRDS Romanian passport (domiciled abroad). She sought medical assistance in Belgium as a Romanian pensioner on presentation of Form S1. However, the Romanian authorities advised her that she was no longer entitled to Form S1 because she was no longer resident in Romania, even though she was in receipt of a pension from Romania.

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 form⁴. For many years, this has been an issue in Sweden, but it is a recurring problem in Bulgaria, Denmark, France, Romania, Germany. It also impacts on the issue of EU Digital COVID Certificates to EU citizens who have not yet obtained a residence document.

Examples:

An Italian citizen who had previously resided in the UK was unable to register in Sweden. She was a student in the UK and had a European Health Insurance Card rather than a Form S1 as required by the Swedish authorities. She was unable to find private insurance acceptable to the tax agency.

A French citizen residing and working in Sweden was vaccinated twice in Sweden but was unable to obtain an EU Digital COVID certificate because he had not yet obtained his personal number.

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.

2.2 Entry and Residence rights

2.2.1 Residence: family rights (1,839 enquiries in 2021, representing a decrease by comparison with 2020)

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 is issued.

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.

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 2021, Brexit has also had a bearing on the questions received. Citizens wanted to know the implications and impact of Brexit on the residence rights of their family members. National authorities are unfamiliar with rights deriving from the Withdrawal Agreement. The COVID-19 crisis has further complicated and delayed resolution of these issues.

Examples:

The Pakistani spouse of a Polish national was waiting for three years for a response from the Irish authorities to his application for retention of residence following his divorce.

Bangladeshi citizens had been residing in Portugal for five years before the end of the transition period as dependent direct relatives of a British resident. They applied for extension of their residence cards. They were told that the cards would be issued within seven to ten working days. No residence cards were issued. After contacting the authorities about the delay, they were told that as they were dependents of a British citizen and since UK had left EU, this would now take time.

A Dutch citizen proposed to take up residence in Italy with his Vietnamese wife. He was advised by the local Italian authorities that he could not register as he did not work or pay taxes there. He was not asked if he had sufficient resources to support himself or health insurance. The authorities also indicated that his wife should apply for a residence permit from the Dutch Consulate as she was in possession of a Schengen visa from the Netherlands.

The Thai wife of a Belgian citizen, permanently resident in France, experienced delays in obtaining a residence card there. When she gave birth, she had no social security cover and was subsequently issued with only a one-year residence card.

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 and 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.

2.2.2 Entry - others (1,644 enquiries in 2021 – increase compared to 2020)

Continuing the pattern of 2020, enquiries under this category in 2021 related mainly to COVID-19 and Brexit. YEA received enquiries relating to the consequences of the various COVID-19 surges on EU mobility rights. Member States imposed travel restrictions from third countries into and within the EU. The pandemic had a global impact on all forms of European mobility.

In accordance with Directive 2004/38/EC, Member States may restrict entry of EU citizens, other than their own nationals, onto their territory on public health grounds. These grounds include diseases such as COVID-19 which have epidemic potential, as defined by the relevant instruments of 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 and their family members have been severely affected by the COVID-19 restrictions. No clear information was available. Citizens required information about their rights to cross EU borders (rules, documents, testing, certificates, etc.). They complained about the lack of harmonisation between the Member States. YEA received questions on the lawfulness under EU law of the mandatory vaccination policy introduced in some Member States. On the 1st of July 2021, the European Digital COVID Certificate came into force pursuant to Regulation (EU) No. 2021/953. The system introduced under the Regulation facilitates free movement of people with the highest possible level of security while the virus is still circulating. Implementation of the Regulation at national level led to many practical questions and often led to discrimination.

Examples:

The Swedish authorities refused to issue EU Digital COVID Certificates to European citizens residing in Sweden who were vaccinated there. The refusal was based on the fact that some EU citizens working in Sweden for less than 1 year did not have a personal tax number. An Irish citizen residing in Sweden was double vaccinated but was unable to obtain an EU Digital COVID Certificate because he had no personal tax number. The issue has also affected many European students in Sweden who had no personal tax number, but had no choice other than to be vaccinated in Sweden as they could not return to their home countries.

A Hungarian citizen was fully vaccinated with Russian vaccine doses. However, the vaccine had not yet been approved by EMA (it was approved only by the Hungarian health authorities). Even though he was able to apply for an EU Digital COVID Certificate, he was unable to travel to Malta as Malta did not recognise the Russian vaccine. The citizen received a Pfizer booster (third) vaccination, but he was still unable to enter Malta unless he had been vaccinated with two doses of Pfizer. This problem affected many Hungarian travellers.

An Italian citizen travels throughout Europe for work reasons. Due to COVID-19 travel restrictions, the citizen was aware that an EU Digital COVID Certificate was required for travel and to re-enter Italy. However, it seems that certain tests carried out in Bavaria, Germany were not compatible with the EU Digital COVID Certificate as the QR Code given was not valid in other European countries.

Ryanair interpreted the restrictions on entry of Brazilian citizens into Ireland as including those who were family members of EU nationals. A Brazilian family member had been living in Ireland and was in possession of an Article 10 residence card. She was denied boarding by Ryanair on a flight from Madrid to Dublin.

Practical conclusions and suggestions from ECAS:

With the EU Digital Covid Certificate, the European Union proposed a unified and coordinated approach between the 27 Member States. However, each Member State retained a final say on movement within their respective territories and independently managed the crisis and the vaccination campaigns. The COVID-19 crisis exacerbated existing Member States' divergencies, whereas EU citizens' rights should have been safeguarded uniformly.

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

In 2021, a significant number of citizens living and working legally in the United Kingdom wanted to know the implications and impact of Brexit on their mobility rights. British citizens resident in other Member States queried the consequences of Brexit on their rights in their host Member State. Some administrations are unfamiliar with the Withdrawal Agreement. As a consequence, difficulties or excessive delays have been reported in obtaining relevant information.

Examples:

A Romanian citizen who was not a beneficiary of the Withdrawal Agreement, queried whether she would be able to travel to the UK on presentation of a national identity card.

A British couple who were beneficiaries of the Withdrawal Agreement having lived in France for over five years, complained that they did not receive the correct residence documents from the French authorities.

The British wife of a German citizen who lived in Germany since the 1970s, was refused renewal of her residence card by the German authorities, because she did not provide sufficient evidence that Hamburg was her place of residence.

A Belgian cross-border worker was employed as a veterinarian in the UK and held a frontier worker permit. The citizen queried the restrictions that would apply when travelling to the UK from Belgium.

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. 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:

A Belgian national was moving to Italy. She cancelled her address in Belgium. However, the Italian authorities insisted that she provided her official residence in Belgium to obtain an Italian fiscal code which is a prerequisite to being registered as a resident in Italy.

Before granting family allowance, the French authorities requested presentation of a residence card from a Dutch citizen who had been residing in France since 2009. In France, it is not necessary to apply for a residence card to be considered legally resident.

Dutch municipalities refuse to register EU citizens if they cannot present a lease or purchase contract for their accommodation and a birth certificate. These EU citizens are obliged to pay social security contributions in the Netherlands for many years but cannot claim benefits because they are not registered in the Netherlands. The Netherlands obliges them to remain registered in their country of origin where they are also not entitled to social security because they pay contributions in the Netherlands.

Practical conclusions and suggestions from ECAS:

Many obstacles to entry and residence rights for EU nationals and their non-EU family members existing today are caused by existing grey 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 national level for the benefit of EU citizens.



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