

**COMPLAINT
TO THE EUROPEAN COMMISSION
CONCERNING
SWEDEN'S FAILURE TO COMPLY WITH EU LAW**

**THE FAILURE OF THE *MIGRATIONSVERKET* TO ISSUE RESIDENCE CARDS
WITHIN 6 MONTHS TO NON-EU FAMILY MEMBERS OF EU CITIZENS**

1. This complaint is submitted jointly by the EU Rights Clinic and Göteborgs Kyrkliga Stadsmission (Crossroads Göteborg) on behalf of 20 individuals who have requested to remain anonymous. Further information on the complainants is contained in Section 1 of this complaint.
2. This complaint relates to the delay of the Swedish migration authority (*Migrationsverket*) to issue residence cards to non-EU family members of EU citizens who are living in Sweden, thereby affecting their ability to lead a normal life in Sweden.
3. Under EU law, the *Migrationsverket* is required to issue residence documents within six months to the non-EU family members of EU citizens. However, the *Migrationsverket* have been taking well over a year, and sometimes even two years, to issue residence cards to non-EU family members.
4. The delay in issuing residence cards is affecting the ability of non-EU family members to lead a normal life in Sweden. The affected family members cannot prove their right to work, they are unable to leave Sweden while awaiting their residence card, and the state of uncertainty caused by excessive delays can lead to anxiety and depression. The delay in issuing residence cards therefore undermines the right of free movement which EU citizens and family members are guaranteed under the EU Charter of Fundamental Rights.
5. The evidence contained in Section 2 of this complaint clearly demonstrates that the failure of the Swedish authorities to issue residence documentation within the time limits laid down by EU law is a persistent systematic problem, rather than a problem consisting in a few isolated cases.
6. The Swedish delay in issuing residence cards is in direct violation of Articles 10 and 20 of the Directive 2004/38/EC on residence rights, which require residence documentation to be issued to non-EU family members within 6 months. Moreover, as has been confirmed in the case law of the Court of Justice, Sweden's failure to comply with the six-month deadline also constitutes a breach of the principle of sincere loyalty under Article 4(3) TEU which requires the Member States to take all appropriate measures to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the EU institutions, including directives.

7. There is no objective justification for this delay by the Swedish authorities. According to consistent case law of the Court of Justice, a Member State is obliged to comply with specific objectives laid down in directives and cannot plead external circumstances as justification for not meeting such clear objectives. The relevant EU legal framework is further elaborated in Section 3 of the complaint.
8. As further set out in Section 4, the problem is due to the failure of the Swedish authorities to comply with the deadlines laid down by EU law. The problem is one of incorrect application of the rules: the *Migrationsverket's* website contains information on the average time it takes for applications for residence documentation to be processed. This information confirms that it can take between 16 to 24 months for the *Migrationsverket* to take a decision on applications for residence cards submitted by non-EU family members of EU citizens.
9. There is no objective justification for this delay by the Swedish authorities. The demands placed on Sweden's *Migrationsverket* in dealing with asylum applications during 2015-16 have since returned to normal levels. Besides these events cannot be used to justify the persistent delays in processing residence applications which have been documented since 2013 and have worsened in recent years.
10. The Commission has previously taken action against several Member States which have failed to issue residence documentation to non-EU family members within the six-month deadline.
11. In a case involving a ten-month delay in the issuance of residence documentation to a non-EU family member, the Commission brought infringement proceedings against Spain before the Court of Justice, which resulted in a ruling by the Court that the Member State had failed to fulfil its obligations under EU law.
12. More recently, the Commission launched formal infringement proceedings concerning extensive delays in the issuance of residence documentation by the UK and Irish authorities. The Commission's action resulted in the elimination by the UK and Irish authorities of delays in processing applications for residence documents submitted by EU citizens and their families. Following the Commission's enforcement action, the UK authorities put in place a comprehensive plan to reduce the backlog of cases, including the significant expansion of the number of caseworkers allocated to handle European applications, as a result of which the time for handling new applications was returned to the appropriate six-month deadline required by Directive 2004/38.
13. These examples, which are further reviewed in Section 5 of the complaint, should also be followed by the Commission when dealing with Sweden's failure to comply with deadlines under the Directive.

14. This is an issue which has been festering for years and it is deplorable that no remedial action has so far been taken to address the problem. Given that the *Migrationsverket* has decided to reduce its staff following a drop in asylum claims, it is clear that there is spare capacity within the institution that could be used to process the backlog of outstanding EU residence cases. The Swedish authorities should be encouraged to give an undertaking to reallocate these resources within the *Migrationsverket* rather than proceed with proposed staff redundancies.
15. To allow this problem to remain unchallenged risks undermining the uniform application of EU law and presents a serious risk of contagion where Member States could be tempted to withhold allocating sufficient resources to their administrative authorities which are responsible for applying Directive 2004/38.
16. In view of Brexit, these excessive delays also risk undermining the protection which are expected to benefit British citizens and their family members under the Withdrawal Agreement.
17. For these reasons, we respectfully call on the Commission to take robust enforcement action against Sweden – as it has done on the past against Spain, the UK and Ireland. In the event the Swedish authorities fail to rectify the problems identified in this complaint without further delay, the Commission is invited to take further specified recommended actions.
18. A petition will be lodged by the EU Rights Clinic before the European Parliament at the same time as this complaint.

Submitted on 10 September 2018

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