

YEA Annual Trends 2019



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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.

In 2019, YEA legal experts replied to **28,034 enquiries** which is an increase of 46% compared to the previous year. 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 2019 figures extracted from the database of all enquiries and the 2019 quarterly feedback reports. YEA uses a classification system that groups enquiries together under various topics.

1. Nature of the enquiries

In 2019, the most important topics, in terms of number of received enquiries were: social security, residence, and entry procedures. This contrasts with last year when, for the first time in the history of the service, social security was not the most common topic. In 2019, social security re-again its first place, representing 20% of all enquiries. YEA also received more enquiries than in previous years relating to consumer rights and free movement of goods. A significant proportion of these enquiries was from businesses.

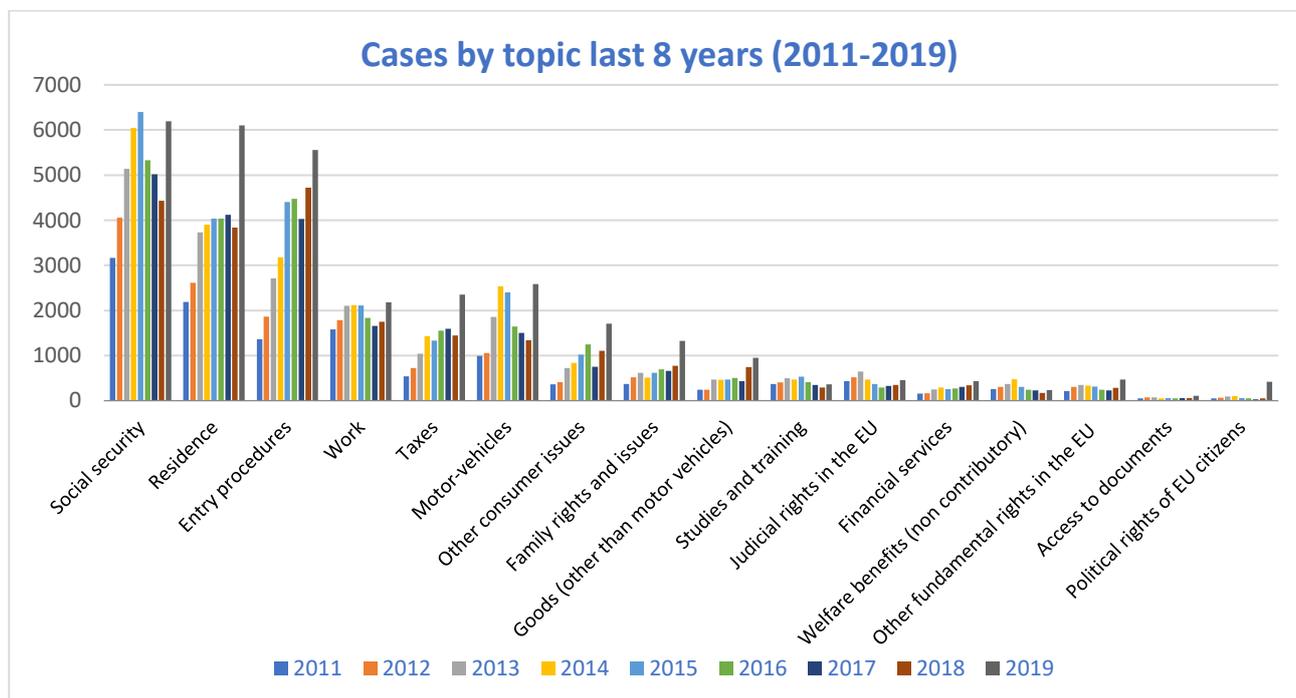


Figure 1: Source YEA Database

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.

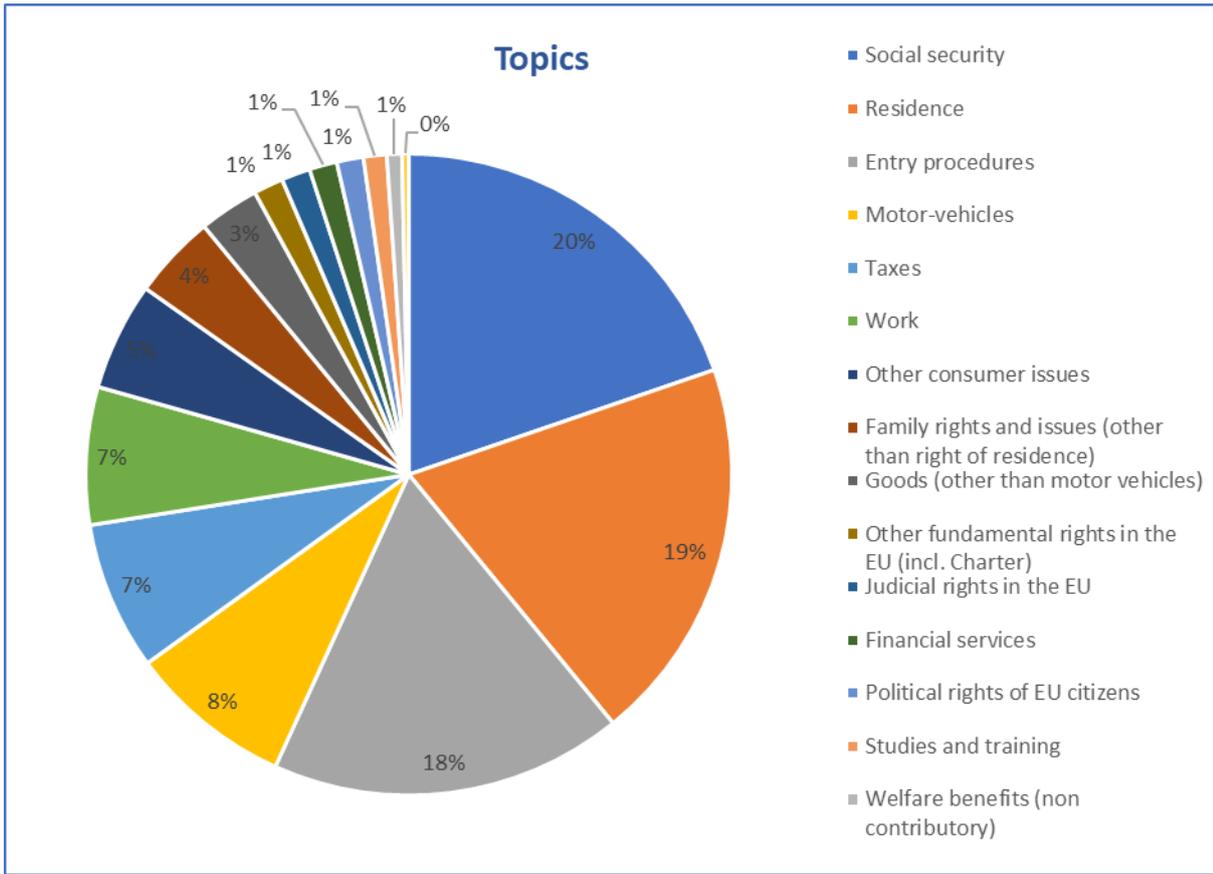


Figure 2: Source YEA Database

YEA received enquiries from citizens from all 28 EU countries as well as from Norwegian, Icelandic and third country nationals who, in most cases, had family ties with EU citizens. The latter group submitted the most enquiries. In 2019, YEA received fewer enquiries from British citizens compared to previous years.

The enquiries received related to all 28 Member States, as well as Norway, Iceland, and Liechtenstein. For the first time, one quarter of YEA enquiries related to the UK and Germany.

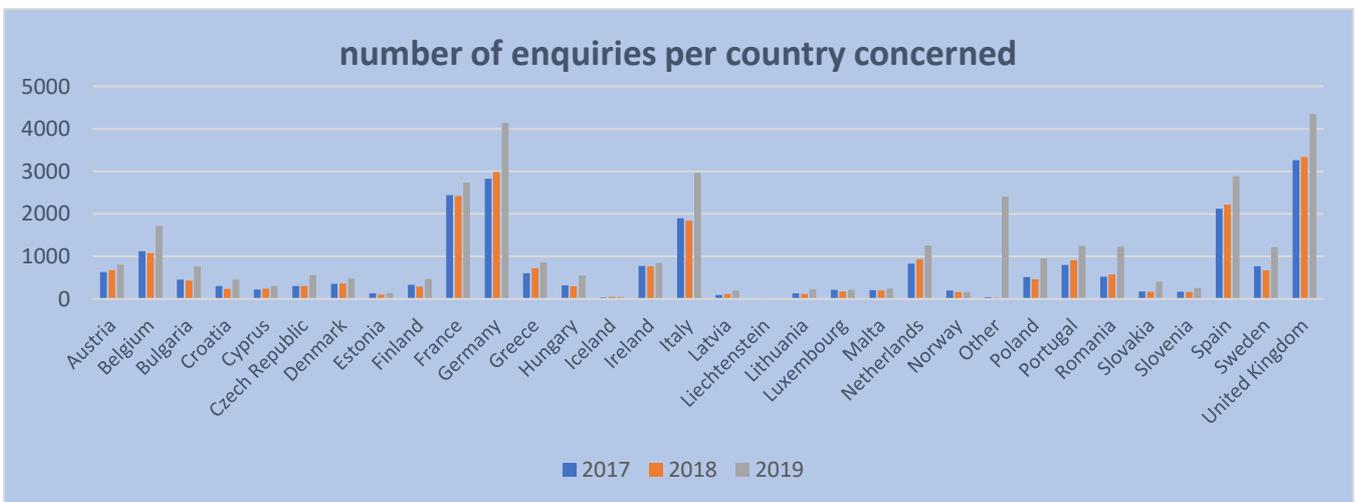


Figure 3: Source YEA Database

2. The five main issues in 2019

Each topic is divided into sub-topics. In 2019, the most important sub-topics remain unchanged compared to previous years, but the sequence is slightly different:

1. Residence - family rights: 3,285 enquiries
2. Social security – country of insurance & general management: 2,505 enquiries
3. Entry – long-term/short-term visas: 2,127 enquiries
4. Social security – Health care, sickness, or maternity: 1,909 enquiries
5. Entry – Travel documents for EU Nationals: 1,674 enquiries

2.1 Entry and Residence rights

2.1.1 Residence: family rights (3,285 enquiries in 2019, which represents an increase by comparison with 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 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 dependent parent (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, 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 issue of a 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:

A Danish citizen worked and lived in Sweden. His dependant Chinese parents-in-law were staying in Sweden on tourist visas but were obliged to regularly return to China to renew these visas. They each applied for a residence card in Sweden. While their residence card applications were being processed, their visas expired. The Swedish authorities refused to issue residence cards to them and did not provide reasons for the refusal.

A British citizen residing in France since 2001 applied for renewal of her residence card. However, she was advised that issue of such cards to British citizens had been temporarily suspended.

A US citizen married to a Spanish citizen and living in Germany for more than five years, requested renewal of his residence card a number of weeks before its expiry. The German authorities refused the renewal without providing any justification.

A Lithuanian citizen and his Singaporean wife who both previously resided in the UK, wanted to settle in Lithuania. However, the wife was unable to obtain correct information about her rights there. She was told that she could only be issued with a one-year “temporary residence permit”

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.

2.1.2 Entry: long-term/short-term visas (2,127 enquiries in 2019)

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 presentation of a valid passport and evidence of a family link (also dependency, serious health grounds and durability of the partnership, where applicable). No additional documents, such as proof of accommodation, sufficient resources, an invitation letter, or 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 - procedures are protracted; extra documentation is required; and the service is not free of charge. These are common issues encountered in most EU countries. Applicants should always have the option to deal with the consular services directly and personally, if they prefer.

Examples:

A Portuguese citizen living outside the EU planned to go to Belgium to study. He wanted to bring his mother who is a citizen of Hong Kong. He enquired whether his mother would be able to obtain a visa on the basis of family reunification and if he would have to find employment in Belgium. Unfortunately, he received contradictory information from official sources.

A Polish citizen, resident in Germany, is married to an Algerian national. Her husband waited for a visa to allow him to join her in Germany for more than a year. At the time of the enquiry to YEA, there had been no communication from the German authorities.

The Irish authorities insisted that the Cambodian wife of a UK national should obtain an apostille from the Cambodian authorities in respect of the couple’s marriage certificate, even though the marriage was conducted in Hong Kong. The Cambodian authorities do not provide such an apostille. Secondly, the Irish authorities insisted on evidence of the durability of the relationship between the UK national and his wife, notwithstanding the fact that they were married. After a delay of seven weeks, the Irish authorities rejected the visa application.

Practical conclusions and suggestions from ECAS:

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 required 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.

2.1.3 Entry: Travel documents for EU Nationals (1,674 enquiries in 2019, increase of 100% by comparison with 2018)

According to Article 5 of Directive 2004/38/EC, without prejudice to the provisions on travel documents applicable to national border controls, Member States shall allow Union citizens to enter their territory with a valid identity card or passport. The Directive provides that the right to enter the country may be restricted due to reasons of public policy, public security or public health.

Based on the above, it should be straightforward to travel from one EU country to another for an EU citizen. However, YEA received numerous enquires demonstrating that this is not the case. An obstacle to EU citizens' free movement arises when EU citizens who reside abroad need to renew or obtain new national identity documents and are not able to do so easily or within a reasonably short timeframe. This adversely affects citizens' travel plans, especially of those citizens needing passports for their children. Authorisation to leave the country is not harmonised within the EU and there are no EU rules on airline travel procedures for unaccompanied minors.

The increase in the number of enquiries related to travel documents for EU citizens is mainly due to Brexit and its impact on the future travel rights of EU citizens. British citizens want to know if they will be allowed to travel freely within the EU and EU citizens ask questions about travel documents required when travelling to the United Kingdom.

Examples:

- Most of the Brexit related enquiries are "basic" and are mainly requests for information:

Do UK citizens have to use the non-EU passport queues now? Will UK citizens need a visa to enter an EU country?

Will EU citizens find it harder to gain entry to the UK? Do EU Citizens require 6 months validity on their passport to enter the UK? What will be the impact of Brexit if a Belgian citizen wants to go to the UK for a short stay, without seeking residence there?

- Other travel document enquiries:

Romanian citizens reported serious difficulties in obtaining new travel documents from Romanian Embassies. A Romanian citizen's passport had expired. She submitted an application for a new passport, but this was refused by the Romanian authorities because her previous passport had been issued by the Romanian Consulate in Munich, Germany. At the time of her enquiry to YEA, she was in Romania with an expired passport. Her Romanian ID had been withdrawn by the Romanian authorities and she was unable to return to Germany without a valid travel document. The Romanian institutions provided no assistance.

Practical conclusions and suggestions from ECAS:

All consulates should provide their nationals with the opportunity to request ID documents via the Consulate. Authorisation to leave the country and airline travel procedures for unaccompanied minors should be harmonised at the European level.

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

In 2019, YEA received numerous enquiries concerning the impact of Brexit on residence rights. Citizens are frustrated that they cannot obtain clarity on how the UK's withdrawal from the EU will affect them. They are worried for their non-EU family members. Citizens legally living and working in the UK wanted to know the implications and future impact of Brexit and how they can take measures to protect their acquired rights in the event of "no deal".

Examples:

A Dutch citizen and his British partner enquired how the residence rights of UK nationals taking up residence in the EU (Italy) would be affected after 31 October 2019, and what would be the rules relating to the registration of their future children.

The British spouse of an Irish national (both residing in France) wonders whether he should apply for a special residence card in advance of Brexit as a UK national or whether the fact that he is the spouse of an Irish national would change something.

A Polish citizen arrived in the UK many years ago to join his British wife. She has a disability. He is legally resident in UK, but he is concerned whether he will be able to get any protection under the Withdrawal Agreement after the end of the transition period.

Administrative practices are often clearly in conflict with EU law, leading to delays and imposing unreasonable requirements. 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. 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).

As a consequence of Brexit, permanent residence cards were not issued to British nationals who required them.

Example:

A British national living and working in France had to wait seven months to receive a reply to his application for a residence card in France. Eventually, he received notice that he should commence a new application procedure in the light of Brexit. If his application was for a permanent residence card (which is not specified), his EU rights were infringed, with possible negative consequences for his settled status after Brexit.

2.2 Social Security

2.2.1 Country of insurance (2,505 enquiries in 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 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. 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 EU³. Yet, citizens continue to experience problems in maintaining social security coverage when they move from one country to another. Sometimes, because of new technologies and “tele working”, it is even more difficult to determine which country is competent. Recently, many EU citizens working in UK queried which country would be competent after Brexit.

Examples:

A French osteopath practises in both France and Italy but has a prominent presence in France. The French social insurance authority advised her that she should pay her social contributions only in France while the Italian social insurance authority advised that she should also pay contributions in Italy.

A Lithuanian citizen working as a civil servant for the University of Maastricht cannot obtain social security cover because the social security institute in the Netherlands told him that it is not possible to be covered in the Netherlands.

A French frontier worker working in the UK while living in France queried which country would be competent for his social security after Brexit.

A British citizen residing in Slovakia and working in the UK for a UK-based employer, queried the impact of Brexit on his situation, i.e. would it impact on the status of frontier workers?

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.

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

2.2.2 Health care, sickness or maternity (1,909 enquiries in 2019)

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.

Examples:

An Italian citizen was hospitalized in France. She did not present an EHIC. Some months later, she received an invoice for her treatment. She paid the invoice and sought reimbursement from the Italian health insurance administration. Her request for reimbursement was rejected.

A German citizen was hospitalised while on holiday in Portugal. The hospital refused to accept his European Health Insurance Card issued by a German insurance provider. He had to pay cash in advance in order to be treated.

A pregnant woman returned to the UK from Germany because of her husband's job. The UK could not pay her maternity allowance because her last place of work was Germany. Germany would not pay parental allowance because she did not reside in Germany. Despite having worked in both countries and having applied for maternity allowance with her German employer in due time, because of her move to the UK, she was not eligible for an allowance neither in Germany, nor in the UK.

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 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 their health insurance contributions twice. The Romanian authorities also refuse to issue the relevant forms and EHICs to EU citizens.

Examples:

A Romanian seasonal worker was injured while working on a German farm. The German competent institution issued Form DA1 so that the Romanian citizen could benefit from healthcare in Romania as

he was insured for workplace accidents in Germany. Unfortunately, the Romanian citizen was not able to receive medical treatment in Romania based on Form DA1 issued by Germany because the Romanian authorities refused to recognise the portable document.

A Romanian student is going to start his university studies in the UK. He required an EHIC, but the Romanian authorities refuse to issue EHICs to Romanian students studying 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 form⁴. 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 British citizen seeking residence in Sweden applied for registration there. He demonstrated that he had sufficient resources, an EHIC and health insurance through a private insurance company in Great Britain. His registration was refused because the EHIC card is not regarded as sufficient proof of health insurance in Sweden. The Swedish authorities requested Form S1 form but this is only issued by the UK authorities to pensioned and state employees working abroad.

Practical conclusions and suggestions from ECAS:

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.

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.



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