

Family members of EU citizens in the UK are losing travel rights unnecessarily

What is the problem?

Consider the following family:

- a Dutch citizen Anna
- living in the UK
- with a Chinese husband Liu Wei
- they have a Dutch daughter Lise who now lives in the Netherlands

Anna and Liu Wei regularly visit their daughter Lise in the Netherlands (of course Covid-19 has sadly temporarily put a stop to this, but it is hoped that such travel will be able to resume as soon as it is deemed safe).

Through the benefit of the EU Free Movement Directive, Liu Wei has always been able to accompany Anna to the Netherlands without having to apply for a visa – by using his UK issued EEA Residence Card.

After the end of the Brexit transition period however, he will now have to apply for a visa for each visit to see his own daughter.

His EEA Residence Card will no longer be valid, and his new EU Settlement Scheme Residence Card will not be recognised by the EU.

Applying for a visa will take time and effort, and in some cases not insignificant cost – as Liu Wei will not even benefit from facilitated visa applications if travelling to Anna's country of origin, the Netherlands.

What is the answer?

The EU could simply decide to accept the EU Settlement Scheme Residence Card as a valid card for travel purposes:

- Normally third country national residence cards are not accepted by Schengen border guards. However this particular third country national residence card (the UK's EU Settlement Scheme residence card) is special, since it bears the wording '**Issued under the EU Exit Separation Agreements**'. Despite the UK no longer being part of the EU, these cards are specifically bound to an international treaty involving the EU.
- Adding these cards to the list of documents in the manual used by Schengen border guards is a simple unilateral decision that the EU could take, to the benefit of its own citizens resident in the UK, who had no say in the Brexit decision and have in any case lost rights in the process.
- The relevant section would be Part III, Chapter 2.2 (p 97) of the [Annex to the Handbook for the for the processing of visa applications](#).
- It surely cannot be the EU's intention to put barriers in the way of EU citizens and their families being able to visit each other – family reunion rights are at the heart of the Free Movement directive.

Please see overleaf for a more in-depth explanation of the legal and process details.

Before Brexit and during the Transition Period:

- Anna can travel to any EU Member State accompanied by Liu Wei
- Liu Wei need only carry his passport and a UK issued 'EEA Residence Card' which is marked with the wording '**Residence card of a Family Member of a Union Citizen**', in accordance with Article 10 of the Free Movement Directive
- even though Liu Wei, being Chinese, would ordinarily require a visa (see [Annex I in Regulation \(EU\) 2018/1806](#)), this card removes the need to obtain a visa
- this is confirmed in a [European Commission letter to the3million](#) in section 1 (a)
- two illustrations of such cards are below – note their wording along the bottom (**Residence card of a Family Member of a Union Citizen**):



After the end of the Transition Period:

- Liu Wei's 'EEA Residence Card' will not longer be valid
- Liu Wei will have applied for a new UK immigration status under the EU Settlement Scheme
- Liu Wei can apply for a biometric residence card to evidence this new UK immigration status
- this residence card is marked with the wording '**Issued under the EU Exit Separation Agreements**', in accordance with the Withdrawal Agreement, Article 18(1)(q)
- this card will not be accepted as a travel document to the EU
- therefore Liu Wei will have to apply for a visa whenever he travels to the Netherlands to visit his daughter, or to another EU Member State for a visit, regardless of whether he accompanies Anna or travels alone
- if Liu Wei accompanies Anna to an EU Member State other than the Netherlands, he should benefit from visa facilitations provided for in Article 5(2) of the [Free Movement Directive](#) – free and on the basis of an accelerated procedure.
- however, if Liu Wei wants to accompany Anna to visit his daughter in the Netherlands, he is [not able to benefit from visa facilitations](#), as Anna is Dutch and Article 5(2) does not apply to citizens traveling to their own country. This means he will have to pay for a visa, and it can take several weeks
- the details above are confirmed in the same [European Commission letter to the3million](#) in section 2
- an illustration of an EU Settlement Scheme residence card is below – note the wording along the bottom (**Issued under the EU Exit Separation Agreements**):

