

To: Michel Barnier, European Commission Task Force for Relations with the United Kingdom

Cc: Ursula von der Leyen, European Commission President
Charles Michel, European Council President
EU27 heads of state in the European Council
David-Maria Sassoli, European Parliament President
Guy Verhofstadt, European Parliament Brexit Coordinator
Antonio Tajani, Chair of AFCO Committee

17 January 2020

Dear Michel Barnier,

We write to you once again on behalf of EU citizens living in the UK, and British citizens living in the EU. Whilst as individuals we deeply regret that the UK is leaving the European Union, as organisations we welcome the fact that there will now be an international treaty, the Withdrawal Agreement, which aims to protect most of our existing rights in our host state.

It has been a long journey for us all since we first met with you and TF50 on 28th March 2017. We recall with thanks your invitation to us to give our input on citizens' rights, in advance of the finalisation of the EU's negotiating mandate for the Withdrawal Agreement. Equally, we appreciated the high level of engagement and exchange with your team during the negotiations on citizens' rights in 2017, including de-briefs after each round.

We note that on the 8th December 2017, the final version of the colour-coded table – the 'Joint Technical Note' on Citizens' Rights – was [published on the TF50 website](#)¹ with all areas shown in green, including the final box which summarised those matters which were outside the EU mandate for the first phase of the negotiations.

We understand that the new EU negotiating mandate - for the future relationship between the UK and the EU - will be finalised by late February, and that your Task Force is currently holding meetings on the range of topics that will need to be covered.

We would very much welcome the opportunity to meet with you again, to put forward our position and ideas on those matters which could not be negotiated within the Withdrawal Agreement, some of which we expand on further in this letter.

At the same time, we would like to be able to discuss our concerns about the implementation of the Withdrawal Agreement, both in the UK but specifically also in the 27 individual EU Member States.

We would like to restate that the aim for citizens' rights - as promised by the EU Commission, as well as by the UK proponents of Vote Leave and different British Prime Ministers and Secretaries of State, and as fought for by both our campaign groups over the last few years – was that our two finite groups of citizens should simply be able to continue our lives as before, keeping all the rights that we had acquired.

It is important to remember that the vast majority of us had no say in the decision of the UK to leave the EU, and that between us, we have been the poster children for EU free movement. The defence of free movement is clearly a central factor in the future relationship negotiation, and as such, we deserve the full package of free movement rights to be protected for this group of over five million citizens.

Even though there is very little time for negotiations before the end of the transition in December 2020, our remaining rights should not be deferred once again, and they should not be bargained against, made dependent on, or packaged within, other negotiation issues. **We must not be made bargaining chips a second time.**

¹ https://ec.europa.eu/commission/sites/beta-political/files/citizens_rights_-_comparison_table.pdf

Matters deferred from the Withdrawal Agreement negotiations

- **Continuing free movement** for UK nationals covered by the Withdrawal Agreement. We do not accept that this right should be in any way contingent on, or related to, the future mobility of citizens between the UK and the EU27, or the nature of the future trading relationship. In August 2017, we submitted a [dossier of case studies](#)² showing how the loss of free movement destroys the 'business-as-usual' lives of so many British citizens who have made their homes in the EU27. We note this has been included in the [European Parliament's resolution](#)³, clause G and point 19.
- **Lifelong right to the return to their host country** for both sets of citizens covered by the Withdrawal Agreement. These citizens will typically have strong family (and other) ties in their country of birth that might require them to leave their host country for an extended period, thus permanently losing their right to reside after an absence of five years, in many cases with devastating consequences.
- **Healthcare arrangements.** Whilst we of course welcome the fact that the current coordinated social security and health arrangements will continue for those covered by the WA, we do have concerns about the implementation of these arrangements and have constructive suggestions that we would like to discuss.
- **Recognition of licences, certificates and lawyers practising under home title.** Whilst we welcome the mutual recognition of professional qualifications provisions set out in the Withdrawal Agreement, it is essential to complete this to include all professions.

Implementation of the Withdrawal Agreement (WA)

The EU and the UK agreed (WA 18(1-3)) that Member States have the option to adopt a constitutive application system. This requires those within the personal scope of the citizens' rights part of the WA to apply for their right to remain in their host country. We continue to have grave concerns about the UK's constitutive application system (the EU Settlement Scheme). The serious harm facing those in the UK who do not apply and become undocumented is becoming ever more apparent with the potential high numbers of those not applying, not acquiring the right status and being discriminated against in breach of the equal treatment provisions of the WA. What will the EU do for those people the WA is supposed to protect?

We have similar concerns as regards implementation of the WA in the EU-27 and are very concerned about the lack of legal certainty for UK citizens resident in the EU-27. Our concern is three-fold.

- Firstly, UK citizens in the EU-27 do not yet have any final official confirmation of which option (a constitutive or declaratory system) each EU-27 country intends to take in implementing the WA and thus whether they will need to apply for their right to remain or not. If a Member State intends to apply a constitutive system, this only leaves an extremely short timescale and much uncertainty about the terms of such a system. Many citizens may yet be rejected for lack of sufficient income or failure to clear other eligibility hurdles and the same concerns arise as in the UK as regards the position of those who fail to apply before the 30 June 2021 deadline.
- Secondly, since member states have until recently focused on a no-deal scenario, there has understandably been a lack of information and outreach concerning implementation of the WA to British citizens given the focus over the last year or more on no deal contingency.
- Thirdly, there is scope for confusion, error and lack of consistency amongst Member States, as well as errors and lack of consistency in implementation at regional and local level within Member States – we are hearing anecdotal evidence of this already as the focus switches to the changed circumstances of a UK exit with a WA. Again, the European Parliament's resolution³ highlights these concerns in points 15.

We look forward to being given the opportunity to discuss these matters with you at greater length.

Yours sincerely,

Nicolas Hatton
the3million

Jane Golding
British in Europe

² https://britishineurope.org/wp-content/uploads/2017/08/British-in-Europe_Free-Movement_Master-Case-Studies_EC.pdf

³ https://www.europarl.europa.eu/doceo/document/TA-9-2020-0006_EN.html