

### the3million and British in Europe: Joint Briefing Paper on Round 3

The negotiations to date have largely consisted of each side seeking clarification of the other's position, and in so doing have touched on most of the issues which have to be addressed.

The next two rounds, however, are where the real "give and take" has to happen if there is to be an agreement on Citizens' Rights. We see the European Parliament's role in this process as critical: we look to the European Parliament to ensure that our rights are preserved. This briefing paper thus outlines our *major* continuing concerns.

1. The UK position on the **cut-off date**, still unclarified, which leads to lack of certainty for both groups.
2. Both the UK and EU positions on **which citizens' rights should be protected**. Quite apart from the sheer injustice of any other approach, would it not be so much more straightforward for everyone simply to adopt M. Barnier's statement and resolve the transitional problem created by Brexit by agreeing that all EU27inUK and UKinEU27 should continue to enjoy *all* their existing rights, and that their entitlement to this status should be evidenced by a simple card acknowledging these rights? This is particularly relevant to the UK position on settled status.
3. The UK position on '**settled status**' and the accompanying **administrative processes**, being based in UK immigration law rather than simply confirming a status already acquired under EU law. These administrative procedures would include systematic criminality checks based on restrictive UK immigration laws, making an application for grant of a right rather than obtaining a declaratory acknowledgment, facing the risk of deportation (and lack of access to healthcare and benefits whilst trying to appeal) without being a 'genuine, present and sufficiently serious threat affecting one of the fundamental interests of society'. Moreover, they risk EU citizens in the UK losing rights of appeal and access to justice.
4. The EU position on **the duration of protection**. It proposes that children's protection should only last as long as they are 'family members', i.e. under 21 or still dependent. After that they would be outside the Withdrawal Agreement, which does not square with "directly enforceable vested rights for the life time of those concerned."
5. Linked to this, the EU position on the question of where the **line between present rights and future relationship** lies as regards citizens' rights, which in our view has been drawn inappropriately early. This part of the negotiation is about the rights enjoyed by *individual* UK citizens in the EU and *individual* EU citizens in the UK at Brexit. The litmus test for the relevance of any issue at this stage of the negotiation should be whether it affects these rights.
6. The EU position on **freedom of movement for UK citizens in the EU 27**, mirrored by the UK's restrictive approach to freedom of movement for EU citizens in the UK. In addition to the far-reaching implications previously highlighted by us, both parties' position on this issue is now clearly impacting most other aspects of the negotiations, from **professional qualifications** to **economic rights** to **frontier workers** and potentially to other areas such as healthcare and pensions. Unless this position is changed, this will result in a situation which will be a far cry from the EU's stated aim of allowing citizens to "live their lives as if Brexit never happened".
7. Both the EU and UK positions on the **2-year absence rule**, coupled with curtailed freedom of movement rights after UK withdrawal. Post-Brexit, losing permanent

residence rights after an absence of over 2 years has a completely different, and devastating, effect to pre-Brexit. Without free movement, residence rights cannot be re-acquired either by UK citizens wishing to move across the EU27 or EU citizens wishing to return to the UK. The solution is to allow both groups to continue to circulate and reside freely within the EU 27 and UK for life. The solution proposed for Irish citizens in the UK provides a precedent for this, especially as the group of EU citizens in the UK are, unlike the Irish population, a finite, as well as being a smaller, group.

8. The UK position on future **family reunification and spouses**. This has the potential to split families. An EU citizen in the UK, wishing to care for an elderly parent in the EU would no longer be able to bring that parent to the UK post-Brexit and would be in the same position as the minority of British citizens with parents overseas and who have been adversely affected by the draconian UK immigration law changes of 2012. Neither would an EU citizen be able to move to the EU to care for a parent without risking not being able to return to the UK after more than 2 years. Equally, UK citizens in the EU wishing to return to the UK post-Brexit would be unable to bring in EU extended family and may even struggle to bring in EU spouses, leaving them potentially unable to return to care for their elderly parents.
9. The UK's position on direct effect of the Withdrawal Agreement and the **jurisdiction of the CJEU**. The recent case of the 100 'erroneous' deportation letters that were sent to EU citizens in the EU highlights and completely vindicates the acute concern of EU citizens to retain full rights of appeal against incorrect decisions by the UK Home Office. The Withdrawal Agreement must contain the requisite detail, have direct effect and give all affected citizens rights for life that cannot be changed by subsequent governments.
10. Given that the UK chose not to routinely register EU citizens in the past, there are now a large number of EU citizens living in the UK who are unable to show that they have been exercising treaty rights in the UK in the past, nor are they able to exercise them now or in the future. This includes carers, disabled people and many vulnerable groups. The UK government has treated these people as living **de facto** lawfully in the UK, evidenced by having access to the NHS, to benefits, being asked to do Jury service, being able to vote in local elections etc. As a result, they now have a legitimate expectation that their right to continue to live in the UK as EU citizens will not be disputed. We seek reassurance that this group of people will be fully covered by the Withdrawal Agreement.
11. For UK citizens in the EU, the **right to vote** in local elections and European elections should be safeguarded in the Withdrawal Agreement. The argument regarding the scope of the EU's competence to deal with this issue should be addressed by the simple act of seeking the agreement of the EU27.
12. The future treatment of **students** who are protected by any agreement on citizens' rights, both those who are studying at present and those children who have yet to start courses of higher education. This does not seem to have been discussed.
13. Finally, even if a satisfactory agreement were to be reached on all citizens' rights issues, without this agreement being **ring-fenced**, 4.5 million citizens still would not be able to sleep easy at night. Our continued uncertainty and anxiety must be brought to an end as soon as possible, regardless of the outcome of the negotiations.

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