

Bristol and Berlin on 4 September 2018

Dear Mr Raab and Mr Barnier,

Today, **the3million** and **British in Europe** are asking you to commit to implement and strengthen your current agreement on citizens' rights, regardless of the outcome of the Brexit negotiations.

We have faced over two years of debilitating uncertainty and anxiety about our status, and are horrified that all the months of negotiations and colour-coded charts on our rights could come to nothing in the event of a No Deal Brexit.

You jointly have it within your powers to end this nightmare immediately for over 4 million of us, by taking the true moral high ground and publicly committing to honouring these agreements on our rights – whatever the outcome of the rest of the negotiations.

We thus now ask you to take citizens out of the “Nothing is agreed until everything is agreed” straightjacket.

We remind you of the statements that were made about us at the start of the negotiations in 2017:

“Brexit should not alter the nature of people's daily lives.” “Given legal certainty is a question of respect for more than 4 million people.” “We first need to tackle the rights of citizens, get a fair and clear agreement” [M. Barnier, Florence 5 May 2017]

“I am making [citizens' rights] an immediate priority at the beginning of the negotiations. But that agreement must be reciprocal because we must protect the rights of UK citizens living in EU member states, too.” [Prime Minister T. May, House of Commons 26 June 2017]

Contrary to what we have been promised, we are facing extreme legal uncertainty on both sides of the Channel, and it is also becoming clear that the UK government may give up on reciprocity and protecting the rights of British citizens in the EU27. At this point, our respective legal realities are that we are at most a distant priority in the political brinkmanship of no deal preparations. And regrettably, that we are increasingly considered as collateral damage in this volatile and dangerous political game.

On the EU side, over 60 Preparedness Notices¹ were published in July which “aim at preparing citizens and stakeholders for the withdrawal of the United Kingdom” in the event of No Deal. Not one of these deals with the detail of citizens' rights for over 1 million British citizens living in the EU. The legal situation of these citizens in this event would at best be a messy combination of EU Third Country National (TCN) status and domestic immigration law in their country of residence, resulting in severely reduced rights – how and if this would even apply is at present unclear.

Similarly, on the UK side, some of its promised ‘No deal technical notes’² were published on the 23rd August. These were expected to contain a technical note for each of the two groups of citizens³ but didn't, continuing to leave us in the dark regarding the detail of our legal situation in case of no deal.

¹ https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notice_en

² <https://www.gov.uk/government/collections/how-to-prepare-if-the-uk-leaves-the-eu-with-no-deal>

³ <http://uk.businessinsider.com/theresa-may-government-has-no-deal-brexit-plans-for-84-areas-of-british-life-full-list-2018-8>

Even if the UK government legislates unilaterally to allow EU citizens to remain in the UK, this legislation would not be backed by an international treaty and is therefore vulnerable to change in the future. The proposed legislation is done by so-called 'secondary legislation', meaning that rights and guarantees are easily removed without parliamentary scrutiny, as was the case when a key clause⁴ protecting the Windrush generation was removed in 2014.

UK unilateral guarantees and EU TCN status are not enough and are not the solution. We need the lifetime protection of an international treaty, and we need independent monitoring. We need all the elements that require co-operation between the UK and the EU – people's lives depend on this. These have been negotiated. They have been written up in legal text. They are waiting to be put into action. They must be honoured.

What we are urgently calling for is a simple, obvious solution – namely that the EU and the UK jointly agree to ringfence and commit to implement the Citizens' Rights part of the draft Withdrawal Agreement in all circumstances, even if it is the *only* aspect to be agreed.

This will confirm:

- The reciprocal rights agreed in principle for both groups of citizens (even though these are reduced rights, in particular the right to free movement for British in Europe)
- The structures and processes for the co-operation required between the EU and the UK to ensure that, for example, a retired Italian citizen living in the UK can receive the pension they built up while working in Sweden and Italy, or that a retired British citizen living in Italy is able to continue to aggregate their UK pension with those they have built up in other countries and to receive healthcare through the reciprocal healthcare system.

the3million and **British in Europe** have been asking for such ringfencing since March 2017, and have provided serious legal opinion on the possibility of achieving this.⁵ We know it can be done if there is the political will to protect us.

However, the draft Withdrawal Agreement falls well short of what has been promised in the past and must therefore then be strengthened to confirm all of our existing rights in line with our demands set out in our joint position paper published last week⁶.

If the fundamental status of EU citizenship means anything at all, we need to be protected rather than penalised for seizing all the opportunities that European citizenship has given us - and which were confirmed by successive UK governments during the UK's membership of the EU. Enough is enough, we need legal certainty now, and we ask you to do the right thing by providing it and in line with the initial promises made by M. Barnier and Theresa May.

Yours sincerely,

Nicolas Hatton

Jane Golding

the3million

British in Europe

⁴ <https://www.theguardian.com/uk-news/2018/apr/16/immigration-law-key-clause-protecting-windrush-immigrants-removed-in-2014>

⁵ <https://eutopialaw.com/2017/06/16/brexit-a-separate-citizens-rights-agreement-under-article-50-teu/>

⁶ <https://www.the3million.org.uk/publications> - Joint Paper of 29.08.2018