



Note on the Prime Minister's comments in Parliament 26 Feb 2019 to implementing Part Two of EU/UK Withdrawal Agreement:

“A separate agreement for citizens’ rights is something the EU have been clear they do not have the legal authority for. If it is not done in a Withdrawal Agreement, these issues become a matter for member states unless the EU were to agree a new mandate to take this forward.”¹

It is incorrect to state that “**the EU**” does not have the legal authority to adopt a separate agreement. A separate citizens' rights agreement can be signed under Article 50 as the only agreement, or even as an initial agreement while negotiations on the rest of article 50 continue.

It is correct that **the European Commission** has not been mandated to negotiate a separate agreement on citizens’ rights. The initial European Council Guidelines of 29 April 2017, setting out the mandate for the Commission, said that 'nothing is agreed until everything is agreed'. However, the European Council can at any time revise that mandate. This is not a legal issue, but simply one of political will. It can instruct the European Commission to negotiate citizens’ rights separately under Article 50. Moreover, the provisions on citizens’ rights have already been drafted. So, the European Council could even simply ask the legal service of the Council or the Commission to prepare this as a separate agreement.

The point of the amendment is to ask the European Council of 27 heads of state to change the existing mandate.

There is no doubt about the legal authority of the EU to act in this way.

Compare this solution with the situation where citizens' rights are not dealt with under Article 50. Any EU/UK agreement will then have to be ratified by 27 separate national Parliaments instead of by the European Parliament and the UK Parliament – a much longer process, leaving considerable uncertainty while Brexit will already have happened. There are also limits to legal competence in relation to what the EU can negotiate, if negotiations happen outside of Article 50. It therefore becomes much more likely that in the end British citizens will have to depend on 27 unilateral decisions for their rights.

Citizens' rights must be dealt with while the Article 50 process is still underway, either as part of the Withdrawal Agreement, or as a separate citizens’ rights agreement. That is why it is urgent to ask for a “no deal” scenario for citizens’ rights to be taken off the table now; because after Article 50 ends it will be too late.

¹ https://www.gov.uk/government/speeches/pm-statement-to-the-house-of-commons-26-february-2019?utm_source=f8b7d29b-3d82-4ae9-8378-0b102135a355&utm_medium=email&utm_campaign=govuk-notifications&utm_content=immediate