

To: President of the European Council Donald Tusk, EU27 heads of state in the European Council
Cc: Guy Verhofstadt (European Parliament), Michel Barnier (European Commission)

16 January 2019

Dear President Tusk,

It is now less than 80 days until Brexit day, and British in Europe and the3million still have no certainty regarding our citizenship rights post-Brexit. With the UK Prime Minister unable to achieve a majority for the Withdrawal Agreement (WA) in the UK Parliament yesterday, we are being dragged closer to the cliff edge and crashing out without a guarantee of our rights at midnight on 29 March 2019. Time is running out, and we are asking you urgently to raise the matter with the UK government of safeguarding citizens' rights: for the EU and UK jointly to commit **now** to honour under Article 50 the agreement already reached on this key priority.

The lives of 5 million Europeans are at stake:

For British citizens in the EU27, the consequences of no deal will be disastrous: they would become third country nationals with no legal status overnight, and be dependent on contingency plans in 27 different countries to secure their legal residence status. To date, some EU 27 countries have set out what they propose to do, but legislation will need to be put in place to implement these proposals. If no contingency plans are made, these citizens will lose their current right to live, work and study in countries they have called their home for many years. Their driving licenses will no longer be valid, and their car insurance will lapse. They will lose entitlement to social security benefits and all but emergency health care.

Although the UK has offered to safeguard most of the rights of EU27 citizens in the UK through the EU settlement scheme, these rights will not be guaranteed in primary legislation if the UK Immigration Bill passes¹. As things stand, on Brexit day their rights derived from EU law will 'fall away' and they will have to apply for the less protected 'settled status' under UK immigration law within one of the most hostile and punitive immigration systems in Europe. In the event of no deal, their status will be further diminished² as will their rights to family reunification and to appeal.

Unilateral solutions are not the answer. They cannot cover issues which require international coordination, such as healthcare, transfer of social security entitlements and aggregation of pensions.

Moreover, they place EU27 citizens in the UK and British citizens in the EU in a very vulnerable legal position as their status can easily be further undermined, at a time when the deteriorating climate between the EU and the UK may lead to a tit-for-tat reduction of rights. This is particularly where that status is defined under immigration law within a 'hostile environment', and by unilateral governmental intervention with poor parliamentary control as is the case in the UK. Equally, any purely national legislative solution that is put in place for British citizens will not be subject to EU monitoring and unlikely to be subject to CJEU jurisdiction. Moreover, a purely national solution could potentially be amended in the future in line with national legal provisions.

¹ https://publications.parliament.uk/pa/bills/cbill/2017-2019/0309/cbill_2017-20190309_en_1.htm

²

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762222/Po_licy_paper_on_citizens_rights_in_the_event_of_a_no_deal_Brexit.pdf

From our very first joint interactions with Michel Barnier and the UK and EU27 governments in the spring of 2017, we have urged all parties to agree early on a text on citizens' rights and to safeguard it, whatever the outcome on Brexit. The UK government has already reached agreements with the EEA and with Switzerland on citizens' rights, and UK and EU27 citizens urgently need their rights similarly guaranteed by an international treaty. Not only is it essential to agree and implement a citizens' rights deal under article 50 now in case the WA fails, it would also avoid five million citizens remaining in limbo in case Article 50 is extended.

Together, we have been the poster children for EU free movement. We have moved across the Channel. We have built lives, businesses and multinational families together. We have made dry legal concepts in the TFEU a reality and helped make the EU project what it is today.

Despite this, we do not feel that the Council has defended the rights of its citizens, be they British or from EU 27 countries. Some of the most fundamental rights of five million committed Europeans have been negotiated away, and without a deal, even the protections provided by the Withdrawal Agreement fall away.

Furthermore, the3million wish to strongly express their solidarity with British in Europe regarding the loss of their continuing free movement rights. We have been told that this is part of the future trade agreement negotiations; it is unacceptable to make 1.3 million people, who have already exercised their free movement rights, continue to live in uncertainty for years to come. For many, their livelihoods depend on this right. We therefore urgently ask you to reconsider and, even at this late stage, commit to ensuring that this right is retained for British citizens in the EU27.

We ask the EU and the UK to sign and implement under Article 50 the citizens' rights part of the Withdrawal Agreement now, or at least to commit now unequivocally in a joint political statement that this will be done prior to Brexit coming into force³.

The Council and its Member States can still choose to take action before 30 March 2019 and ensure that five million EU citizens, who have simply exercised their free movement rights to build a better EU, are not penalised for this.

Yours sincerely,

Nicolas Hatton
the3million

Jane Golding
British in Europe

³ A more detailed legal argumentation about the limits of unilateral solutions and about the possibility of using Article 50 as the basis for a separate citizens' rights agreement can be found in the paper by Prof. Stijn Smismans: <https://bit.ly/Ringfencing5mCitizensRights>