

BREXIT STEERING GROUP COMMENTS ON EU/UK POSITIONS ON CITIZENS' RIGHTS

TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES	DRAFT BSG COMMENTS
Personal scope	EU nationals lawfully resident before the cut-off date	Date of UK's withdrawal	Between the date of A50 trigger and date of exit	UK to clarify	<i>This point is non-negotiable and creates unnecessary uncertainty. The UK is legally a member of the EU until the withdrawal date, hence, the cut-off date should correspond to the latter.</i>
		EU citizens resident in accordance with Art 6, 7, 12, 13, 14, 16 and/or 17 of Directive 2004/38	EU citizens resident in accordance with Art 6, 7, 12, 13, 14, 16 and/or 17 of Directive 2004/38		<i>The Commission's position paper on "Essential Principles on Citizens' Rights" has a broader scope and takes into consideration also those who <u>have resided or worked</u> in the EU 27 and/or in UK. The Commission position paper also refers to Regulation 883/2004, of which Article 2 sets out the persons covered for matters listed in Article 3 of the same regulation.</i>
		EU rules with usual margins of discretion	UK prepared to specify in the WA details of implementation such as lack of Comprehensive Sickness Insurance (CSI) or not testing 'genuine and effective' work		<i>The UK position reduces existing rights of EU citizens and adds unnecessary uncertainty. The criteria for CSI and 'genuine and effective' work test should be dropped; current EU rules should remain unchanged and the rights citizens currently have built up should be protected.</i> BSG POLITICAL PRIORITY
	EU national posted workers	Not covered by the citizens' rights chapter of the WA (linked to cross-border	EU national posted workers at the cut off date within scope of WA		<i>As correctly stated in the EU position, posted workers are indeed not part of this chapter. However, clarification might be needed as to</i>

		services)			<i>the position of posted workers who are posted on the withdrawal date.</i>
Frontier workers		Those who are working as a frontier worker at the point of UK's withdrawal (or considered within the definition of a frontier worker e.g. jobseeker for 6 months) fall within the scope of the WA insofar as they retain the status of a frontier worker. Such workers retain the rights they currently enjoy to enter and to work in the host country. The rights they enjoy in their country of residence are similarly protected.	UK will offer reciprocal arrangements		<i>Clarification might be needed as regards to frontier workers who have worked in EU27/UK prior to the point of withdrawal.</i>
		To use the definition of 'a frontier worker' (including self employed workers) as defined in case law concerning Articles 45 and 49 TFEU and Reg.492/2011.	UK to consider. UK seeks clarification on how UK citizens in the EU will be identified as covered by the WA as a matter of practice.		
Current family members		- Family members as defined in Article 2 of Directive 2004/38; and - Other family members as defined under the combination of Article 3 of	- Family members as defined in Article 2 of Directive 2004/38; and - Other family members as defined under the		

		Directive 2004/38 and individual MS legislation (to the extent such facilitation has been provided for) who are resident in accordance with Art 2 and Art 3 on the date of UK's withdrawal	combination of Article 3 of Directive 2004/38 and individual MS legislation (to the extent such facilitation has been provided for) who are resident in accordance with Art 2 and Art 3 on the date of UK's withdrawal		
		Residents above will fall within the scope of the WA <u>as a family member</u>	Residents above will fall within the scope of the WA <u>as an independent right holder</u>	To clarify	<i>The BSG fully support the EU position in this regard. The unestablished concept of treating a family member as an 'independent rights holder' is potentially risky and adds uncertainty.</i> <i>BSG POLITICAL PRIORITY</i>
		Family members with a retained right of residence who are resident in accordance with Article 12 and 13 2004/38 on the date of the UK's withdrawal will fall within the scope of the WA.	Family members with a retained right of residence who are resident in accordance with Article 12 and 13 2004/38 on the date of the UK's withdrawal will fall within the scope of the WA.		
		Rights of EU child to pursue education (<i>Chen/Texiera</i>)	Rights of EU child to pursue education (<i>Chen/Texiera</i>) protected		<i>Same concerns as expressed above in relation to the treatment of family members as 'independent right holders'.</i>

		protected for period of child's education	as independent right holder eligible for permanent residence		<i>In this regard, it seems appropriate to refer to Article 10 of Regulation 492/2011.</i>
Future family members	This is an issue of preserving rights under EU law and not an issue of equal treatment. Family members as defined in Directive 2004/38 who accompany or join the EU citizen <u>after</u> the date of withdrawal may continue to benefit from rights of residence under same provisions as current family members.	Equal treatment as between EU and British citizens as regards applicable rules. Future family members will be subject to the same rules that apply to non-EU nationals joining British citizens, or alternatively to the post-exit immigration arrangements for the EU citizens who arrive after the specified date.			<i>The UK position is clearly an unacceptable retrograde step for EU citizens compared to the current situation. The more restrictive criteria drastically undermine current rights of EU citizens in relations to bringing children and spouses. This includes the right for EU citizens' non-EU spouses to join them after the withdrawal date.</i> BSG POLITICAL PRIORITY
	Children born after UK's withdrawal would be able to join their parents <u>as a family member</u> (not a right holder)	Children born to an EU citizen parent with settled status in the UK after the date of withdrawal will be eligible to immediately acquire settled status or British citizenship if born in UK as an independent right holder		To clarify	<i>Same concerns expressed above in relation to the treatment of family members as 'independent right holders' and the administrative burden placed on children of EU citizens.</i>

Nature of the agreement	Source	International Treaty which creates obligations which are binding in international law on the Parties	International Treaty which creates obligations which are binding in international law on the Parties		<p><i>While the document indicates agreement on the nature of the WA, from the EU perspective WA is by its nature and procedure a sui generis act of EU law, but from the perspective of the UK it raises specific issues about the enforcement, since the latter is not bound by the EU law. We therefore invite the Commission to clarify the extent to which the WA will produce effects at the level of the international law and guarantees provided by the UK for its entrenchment in the UK domestic order and guarantees for UK future abidance of its obligations.</i></p> <p><i>A second related question is the issue of degree of self-execution of the WA in the EU legal order in general and in particular with regards to citizens' rights.</i></p> <p><i>Finally, considering that the status of third country nationals is largely regulated at the national level, clarification would be welcome on whether this would concern only UK citizens not covered by the WA and whether implementing measures would need to be introduced at the level of Member States.</i></p>
	Individual enforcement of rights	Directly effective provisions of agreement enforceable through the domestic courts of EU27 <u>and UK</u> (i.e.	Rights granted through UK law and enforceable through the domestic UK judicial system, but		<p><i>The UK position adds further unnecessary uncertainty. The EU proposal of 'direct effect' is crucial for citizens to invoke their rights in</i></p>

		individuals can rely directly on WA provisions in front of domestic courts to override domestic implementing legislation)	without the WA rights having a direct effect UK courts have regard to WA where implementing legislation is ambiguous		<i>front of the courts, independently of national legislation and without possible delays.</i>
	Role of CJEU			For discussion in Governance Group	<i>Although this issue has been redirected to the Governance Group and is related to governance of the WA as a whole, it would be appropriate to deal with the matter already. The WA should ensure that the Court of Justice of the EU is fully able to fulfil its interpretation and enforcement role and that future CJEU case law will be taken into account, specifically with regards to citizens' rights. This would provide immediate legal certainty to the citizens as regard to the authority entrusted with the task of interpreting and monitoring the provisions of the agreement and of enforcing their rights. Progress on this issue to be seen as essential in determining if 'sufficient progress' has been achieved in this area.</i> BSG POLITICAL PRIORITIES
	Monitoring and oversight	European Commission to monitor compliance	Commission monitoring body for EU27. UK prepared to consider establishment of an independent monitoring arrangement in the UK		<i>We support the EU position. However, in case of lack of agreement between the negotiating parties on this point, a joint monitoring body in which both the EU27 Commission and the UK are represented could be considered.</i>

	Use of EU law concepts	EU law concepts used in WA interpreted in line with CJEU case law as at the point of the UK's withdrawal	EU law concepts used in WA interpreted in line with CJEU case law as at the point of the UK's withdrawal		<i>See concerns mentioned above under 'Role of CJEU'.</i>
	Future CJEU case law	Future CJEU case law to be taken into account	UK to consider	For discussion in Governance Group	<i>The BSG fully supports the EU position; future CJEU case law should be taken into account. See our general concerns mentioned above under Role of CJEU.</i>
Residence	Permanent residence	Conditions for acquiring PR as per Article 16 Directive 2004/38 (5 years residence as a worker/self employed person, student, self sufficient person, or family member thereof)	Minimum conditions for acquiring PR as per Article 16 Directive 2004/38 (5 years residence as a worker/self employed person, student, self sufficient person, or family member thereof)		<i>The BSG is worried about UK's concept of "minimum conditions" in this regard.</i> <i>In addition to the references made to Articles 16 and 17 of the Directive, it would be appropriate to also mention Article 18.</i>
		EU rules with usual margins of discretion	UK prepared to specify in the WA details of implementation such as lack of CSI or not testing 'genuine and effective' work		<i>The UK position reduces existing rights of EU citizens and adds unnecessary uncertainty. The current EU rules should remain unchanged and the rights citizens currently have built up should be protected.</i>
		Conditions for acquiring PR as per Article 17 Directive 2004/38 (retired people, permanent incapacity)	Conditions for acquiring PR as per Article 17 Directive 2004/38 (retired people, permanent incapacity)		

	Loss of permanent residence	Loss of permanent residence status after 2 years	Loss of permanent residence status after 2 years		<p><i>While the loss of permanent residence status after two years is in line with Directive 2004/38, the BSG believes it has to be seen in the context of free movement in which EU citizens enjoy a continuing right to reside in the Member State in which they were previously permanently resident. A continuing right of EU citizens to reside in the UK would be lost after the UK's withdrawal. In this new context, the two-year absence rule could lead to a more restrictive outcome.</i></p> <p><i>The issue is linked to continuing rights of freedom of movement of EU citizens in the UK and UK citizens in the EU. The BSG believes that this new context needs to be taken into account when discussing this issue.</i></p>
			UK prepared to offer further flexibilities <u>in respect of citizens with strong ties in the UK</u> (e.g. students abroad for studying, overseas posting).	UK seeks similar outcome from the EU on this point	<i>The UK position is also problematic because it would imply a modification of EU law and thereby extend the scope of those covered by the WA.</i>
	Temporary residence	Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 Directive 2004/38 – including right to change status (e.g. student to	Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 Directive 2004/38 -		

		worker)	including right to change status (e.g. student to worker)		
Continuity of residence	Definition of continuity of residence as per Article 16 (3) (i.e. permitted absence of 6 months in any 12 or 12 months for an important reason e.g. childbirth)	Definition of continuity of residence as per Article 16 (3) (i.e. permitted absence of 6 months in any 12 or 12 months for an important reason e.g. childbirth)			
Criminality committed pre exit	Expulsion due to public security, policy or health as per Directive 2004/38	Expulsion for pre-exit activity on basis of public policy/security/health as per Directive 2004/38			
Criminality committed post exit	Expulsion due to public security, policy or health as per Directive 2004/38	Expulsion for post-exit activity assessed under UK immigration rules			<i>Again, the UK position contains many uncertainties. The position expressed in the White Paper of the British Government on "Safeguarding the position of EU citizens in the UK and UK nationals in the EU" is also too generic to provide the needed clarity.</i>
Administrative procedures - general	As per Directive 2004/38 current EU position is that documents are declaratory.	UK position is that rights are granted by Home Office, therefore documentation are constitutive in order to give certainty to EU citizens in the UK as to their status and enable them to prove that they	It will be necessary to identify beneficiaries of the WA through documentation		<i>The BSG fully support the EU position; the UK proposal introduces an extremely burdensome administrative procedure that risks undermining the principle of reciprocity and the continuity of rights.</i> BSG POLITICAL PRIORITY

			have rights under the WA.		
	Current holders of permanent residence certificate	Citizens shall be considered legally resident even if they do not hold a residence document evidencing that right.	Holders of Permanent Residence certificates need to reapply; UK ready to offer more streamlined administrative procedure. UK seeks clarification on how UK citizens in the EU will be identified as covered by the WA as a matter of practice.		<i>The BSG fully support the EU position in this regard.</i>
	Administrative procedures – criminality checks	EU position is that criminality checks cannot be conducted systematically	UK position that systematic criminality checks on applicants necessary to assess criminality/conduct criteria in application.		<i>The BSG fully supports the EU position that such checks cannot be conducted systematically.</i>
	Administrative procedures – smooth and streamlined	As per EU 27 individual administrative procedures.	UK plans new caseworking system capable of handling volumes, suitable for handling the post-exit	Both sides to provide information on any changes in procedures and communications	<i>The BSG fully support the EU position in this regard.</i>

ID requirements for documentation as a beneficiary of the WA	As per Directive 2004/38 – valid passport or ID card	UK position is to verify identity of applicant through passport (preferred) or ID card, as permitted by EU rules. Biometric information (photo) may be required		
Fees for documentation	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents		
Associated Rights	Equal treatment within the limits of Article 24 with respect to social security, social assistance, health care, employment and self-employment, education and training, social and tax advantages	UK settled status means: Equal treatment with respect to social security, social assistance, health care, employment and self-employment, education and training, social and tax advantages		
Voting rights	EU position does not cover UK citizens' rights to vote and/or stand in local elections because this arises from EU citizenship rights	UK wants to protect existing rights of UK/EU citizens to vote and/or stand in local elections in their host state in		<i>We take the view that something as fundamental as the right to vote in local elections should not in principle be taken away from those who previously were able to exercise it.</i>

			the WA		
	Duration of rights	Life-long protection for the right holder as guaranteed by the Withdrawal Agreement	Life-long protection for the right holder as guaranteed by the Withdrawal Agreement		
	Further movement rights	UK nationals in scope of WA only have protected rights in the state(s) in which they have residence rights on exit day	UK nationals in scope should be able to change their place of residence within EU27 as per Directive 2004/38		<i>Clarification is necessary with regards to how both parties understand the principle of reciprocity on this point.</i>
Social security coordination	Personal scope	Personal scope of Regulation 883/2004 as covered in Article 2	Personal scope of Regulation 883/2004 as covered in Article 2		
	Past residence and work	EU and UK citizens having worked or resided in the EU27/UK in the past shall, for the purposes of aggregation of periods of social security insurance, in accordance with regulation 883/2004 be covered by the WA.	EU and UK citizens having worked or resided in the EU27/UK in the past shall, for the purposes of aggregation of periods of social security insurance, in accordance with regulation 883/2004 be covered by the WA.		
	Personal scope – some third country nationals	As in Regulation 883/2004 except third country nationals that are not family members	Refugees and stateless persons should be covered because they are included in Regulation	Commission to clarify scope	<i>The BSG fully support the EU position in this regard.</i>

			883. UK wants to ensure that past contributions by third country nationals continue to be recognised after the withdrawal date.		
Past and future contributions - Aggregation under Regulation 883/2004	Contributions both before and after exit will be recognised for those covered by the WA.	Contributions both before and after exit will be recognised for those covered by the WA.			
Past and future contributions – Aggregation under Regulation 883/2004 and Regulation 1231/2010	Contributions both before and after exit will be recognised for those covered by the WA.	Contributions both before and after exit will be recognised for those covered by the WA.			
Equal treatment	Equal treatment under the conditions set out in EU law.	Equal treatment under the conditions set out in EU law.			
Benefits	All those referred to in Regulation 883/2004	All those referred to in Regulation 883/2004			
Benefits – export of pensions	Lifetime export of uprated pension.	Lifetime export of uprated pension.			

Benefits – export of other benefits	Lifetime export under conditions in Regulation 883/2004.	Guarantee export if exporting that benefit on the specified date, and guarantee parity with UK nationals if not.		<p><i>The BSG fully supports the EU position in this regard, and agrees that, for example, the exports of benefits in relation to children born after the withdrawal date, should still be possible.</i></p> <p><i>BSG POLITICAL PRIORITY</i></p>	
Healthcare – material scope	The rules for healthcare will follow Regulations 883/2004 and 987/2009.	The rules for healthcare will follow Regulations 883/2004 and 987/2009. For instance, responsibility for funding healthcare lies with the competent authority for State Pensions.			
Healthcare– personal scope	Persons whose competent state is the UK and are in the EU27 on exit day (and vice versa) – whether on a temporary stay or resident --- continue to be eligible for healthcare reimbursement, including under the EHIC scheme, as long as that position continues.	<p>Persons whose competent state is the UK and are in the EU27 on exit day (and vice versa) – whether on a temporary stay or resident --- continue to be eligible for healthcare reimbursement, including under the EHIC scheme, as long as that position continues.</p> <p>This includes, for instance, EU27 citizens</p>			

			working in the UK on exit day (and vice versa for UK nationals in the EU27); EU27 pensioners living in the UK on exit day (and vice versa); and EU27 nationals studying in the UK on exit day (and vice versa).		
		No continuing healthcare entitlement under Reg.883/2004 if no cross border situation on exit day. Goes beyond personal scope.	The UK seeks a broad scope for EHIC based on the principle of an insured person under 883, without any need for a cross border situation on day of exit. Significant concerns about operability without this.		<i>The BSG fully supports the EU position, the UK position appears to relate to the future relationship.</i>
	Coordination principles apart from export	All other coordination principles of Regulation 883/2004	All other coordination principles of Regulation 883/2004		
	Administrative cooperation	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009		
Professional	Personal scope	The rights of EU27 persons resident in the UK before the withdrawal date and vice	The rights of EU27 persons resident in the UK on the specified date		

qualifications		versa as well as frontier workers.	and vice versa as well as frontier workers.		
			Right to have a professional qualification recognised should not be tied to residency.		<i>Clarification needed on implications of this (also applies to other issues below)</i>
	Qualifications	PQs obtained in EU28 before WD.	PQs obtained in EU28 before WD.		
			PQs includes periods of professional experience and attestations of competence; sector specific legislation in transports, audits, legal services and others; and licenses and certificates that operate in a similar way to PQs.*		
			PQs in the course of being acquired at WD.		
	Equal treatment	Full equal treatment with national professionals (Articles 45 and 49 TFEU) where professionals are resident in the UK before the Withdrawal Date and vice versa.	Full equal treatment with national professionals (Articles 45 and 49 TFEU) where professionals are resident in the UK on the specified date and vice versa.		

			Relevant equal treatment with national professionals for those who are neither frontier workers nor resident on the specified date.		
Recognition decisions	To be grandfathered: > decisions on recognition of EU 28 qualifications granted before WD either in the UK or in any other EU 27	To be grandfathered: > decisions on recognition of EU 28 qualifications granted before WD either in the UK or in EU 27			
	> decisions on recognition of 3rd country qualifications which have been assimilated to EU qualifications after 3 years of exercise in the EU28 which first recognised them	> decisions on recognition of 3rd country qualifications which have been assimilated to EU qualifications after 3 years of exercise in the EU28 which first recognised them			
	> on-going recognition procedures to be completed under the rules applicable before WD (both EU and third-country recognitions) including those undertaking	> on-going recognition procedures to be completed under the rules applicable on the specified date (both EU and third-country recognitions) including			

		compensatory measures to obtain recognition.	those undertaking compensatory measures to obtain recognition.		
		EU to clarify on the basis of the list provided by the UK.	Continued recognition of professional qualifications which are recognised throughout the EU without a recognition decision under relevant EU law*.		
		To the extent that there is no recognition decisions before Withdrawal Date, this issue is outside the scope.	PQs that have been obtained, or are in the course of being obtained, but the citizen hasn't been through or begun the process of having their qualification recognised, have the right to have the qualification recognised after Withdrawal Date.		
	Territorial scope	The effects of grandfathered recognition decisions limited to the issuing State – no subsequent single market rights (second establishment –cross-border provision of services) under EU law, and	The right to have a qualification recognised and right to practise a profession should apply across UK and all EU 27 states.		

		no grandfathering of recognition decisions in States other than the State where the UK national is residing or working as a frontier worker.			
Other economic rights	Personal scope	The rights of EU27 residents in the UK before the withdrawal date and vice versa.	The rights of EU27 residents in the UK on the specified date and vice versa.		
	Rights	Individuals shall maintain all their rights, including equal treatment, under Articles 21, 45 and 49 TFEU, and under Directive 2004/38, Regulation 492/2011 as in associated rights.	Protect the rights of individuals under relevant provisions of EU law, including the rights under Article 49 TFEU in the State of residence or frontier work (e.g. the right to set up and manage an undertaking, the right to equal treatment in the participation in the capital of EU companies or firms)		
	Territorial scope	Agreement to be confined to UK citizens residing or frontier working in a EU27	Economic rights for UK nationals resident or frontier working in the		

		Member State and vice versa at the time of withdrawal.	EU27 extend across all EU27 Member States.		
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- * Directive 2005/36/EC (MRPQ - most professions)
- Directives 77/249/EEC and 98/5/EC (lawyers - services and establishment)
- Directive 86/653/EEC (self-employed commercial agents)
- Directive 74/557/EEC (self-employed persons and intermediaries engaging in the trade and distribution of toxic products)
- Directive 2006/43/EC (statutory auditors)
- Directive 2003/59/EC (drivers of certain road vehicles for the carriage of goods or passengers)
- Regulation 1071/2009 (road transport operators)
- Regulation 216/2008 (commercial pilots and air traffic control officers)
- Regulation 1321/2014 (maintenance engineers, aviation)
- Directive 2007/59/EC (train drivers)
- Directive 2008/106/EC (seafarers)
- Regulation 1099/2009 (slaughtermen)
- Regulation 1/2005 (those transporting animals)
- Regulation 517/2014 (those handling fluorinated gases)