

Assessment of the Brexit Steering Group on the UK Paper “Safeguarding the Position of EU citizens living in the UK and UK Nationals living in the EU”

1. The European Parliament represents all citizens of the EU and will act to protect their interests throughout the whole process in line with its resolution of 5 April 2017.
2. The resolution fixed two general criteria in relation to citizens’ rights:
 - to ensure fair treatment of EU citizens living, or having lived, in the UK and of UK citizens living, or having lived, in the EU;
 - their respective rights and interests to be given full priority in the negotiations.
3. These criteria are also contained in the EU negotiator’s position paper (“Essential Principles on Citizens’ Rights”) of 24 May 2017, which the Brexit Steering Group (BSG) fully supports.
4. The Parliament resolution and the EU negotiator’s position paper both require that the status and rights of EU citizens in the UK and of UK citizens in the EU be subject to the principles of reciprocity, equity, symmetry and non-discrimination. The protection of the integrity of Union law, including the Charter of Fundamental Rights, and its enforcement framework are also to be ensured.
5. The BSG has examined the UK’s response to the EU position paper entitled “Safeguarding the Position of EU citizens living in the UK and UK Nationals living in the EU” of 26 June 2017 and would make the following overall assessment:

I. Overall assessment

6. Rather than adopt the clear, swift and relatively uncomplicated solution of simply guaranteeing existing citizens’ rights laid down in EU law, the UK has opted to create a new category in its internal immigration law which puts EU citizens in the UK on a similar level as third country nationals. Therefore, the UK does not respect the principles of reciprocity, symmetry and non-discrimination. From the perspective of EU law, the rights of EU citizens in the UK will be reduced to a level lower than third country nationals in the EU. The aspirational language used in relation to rights as important as the right to health or the recognition of diploma and professional qualifications does not provide the much needed guarantees. Above all, the UK proposal means that EU citizens would have no guarantee that the UK Parliament would not make changes to UK immigration law in the future, meaning no life-long protection. This could also apply for the EU side. Our goal should be guarantees which can only be changed by mutual assent of both sides.

Finally, if it turns out that EU citizens, along with all of the above, will also be required to carry with them at all times documentation proving their “settled status” they would be looking at nothing less than relegation to second-class status.

7. Turning to more specific points the BSG would highlight the following:

II. Reduction of existing rights

8. The UK proposal will reduce existing rights of EU citizens living in the UK, including of those citizens who have already for many years been legal residents in the UK. This simply undermines the basic principle of reciprocity. Our main concerns relate to:
 - a) **“Settled status”**: “Settled status” in the UK proposal would be the outcome of the UK granting EU citizens permission to stay. This contrasts starkly with the automaticity and clarity of residence rights found in EU law. It would also be conditional on proof of continuous residence and can be further restricted by criteria such as conduct and criminality, so that EU citizens in the UK would be at greater risk of expulsion than is currently the case.
 - b) **Loss of “settled status”**: The UK proposal says that those with “settled status” would lose this if they left the UK for more than two years. While exceptions may be made for those who “have strong ties in the UK”, no details are provided;
 - c) **Degradation of situation of EU citizens who have not yet acquired “settled status”**: EU citizens who do not have five years’ continuous residence at the time of the UK’s exit would have to apply for a temporary status entailing more limited rights and benefits than those who had already achieved “settled status”;
 - d) **Family rights**: Future family members of EU citizens who come to the UK after withdrawal would be subject to the same rules as apply to non-EU nationals joining UK citizens. These more restrictive criteria include a series of income thresholds for those bringing partners or children. Additionally we require that all rights currently granted by EU citizens, including the right for EU citizens’ non-EU spouses to join them in their Member State of residence at any time after Brexit, are retained. Otherwise this would be a retrograde step for EU citizens compared to the current situation;
 - e) **Loss of right to export benefits**: EU citizens with “settled status” would continue to be able to export benefits post-UK exit if they were already

doing so pre-UK exit. However, this would not be possible for benefits arising after the UK leaves, for example in relation to children born after 30 March 2019;

- f) **Third-country nationals:** Third-country nationals who have or will have benefitted from EU law on social-security coordination are not covered;
- g) **Voting rights:** We cannot conceive that something as fundamental as the right to vote would be taken away from those who previously were able to exercise it.

III. Adding to the uncertainty

- 9. Since the referendum last year, EU and UK have lived under uncertainty with gravely unsettling effect on their lives. The UK proposal adds to this uncertainty in the following way:
 - a) **Non-determination of a “cut-off date”:** Uncertainty has been created by the UK’s inclusion of a “cut-off date” to be fixed between 29 March 2017 and the actual date of UK withdrawal. This would affect, among others, the ability to achieve “settled status”, depending on the date of arrival to the UK. Any “cut-off” date that is not the date of withdrawal should be rejected;
 - b) **No clear eligibility criteria and assessments:** The UK proposal is not clear as regards the actual details of the eligibility criteria and conditions for achieving “settled status”. This is vague and ambiguous. There is further lack of clarity for those needing to request temporary residence during the grace period;
 - c) **No systematic guarantee for all categories of EU citizens:** Certainty is not helped by the fact that the UK proposal is silent as regards frontier workers and those EU citizens who have resided or previously worked in the UK;
 - d) **No guarantee of mutual recognition of professional qualifications:** No assurance that qualifications recognised before the UK’s withdrawal would be recognised after its exit;
 - e) **No guarantees for EU students:** Despite EU Students benefitting from home fees at UK universities, they would nevertheless be required to apply for permission to reside. Furthermore, there is no guarantee that students on either side can continue participating in the Erasmus programme;

- f) **No proposal for UK citizens in the EU:** The UK proposal says nothing as to how it thinks that reciprocal rights for its own citizens will be enacted and enforced. Our proposal is to keep current rights enjoyed by UK citizens in the EU intact and to upgrade EU citizens' rights in UK so as to achieve effective reciprocity.

IV. Increased administrative burden

- 10. While the UK document announces streamlining of administrative procedures, in reality the administrative burden on EU citizens will increase:
 - a) **Separate applications for each family member:** Each family member, including children, has to make separate applications for "settled status" with the risk of potentially different outcomes;
 - b) **Reapplications:** EU citizens who have persevered and already successfully completed the application process for permanent leave to remain, including filling in the 85-page form, will have to reapply for "settled status";
 - c) **Temporary residence permit rewrite:** Those EU citizens who will not meet the five years' residence requirement by the end of the grace period will have to make two applications: first to apply for permission to remain and subsequently for "settled status"; in both cases the outcome is uncertain.

V. No proper enforcement mechanisms

- 11. Legal rights are empty if they cannot be interpreted and individually enforced. The Withdrawal Agreement must ensure that the Court of Justice of the EU is fully able to fulfil its interpretation and enforcement role with regard to EU citizens' rights.

VI. Citizenship

- 12. Many UK citizens have expressed strong opposition to losing the rights they currently enjoy as defined in Art. 20 of the Treaty on the Functioning of the EU: our proposal is to examine how to mitigate this within the limits of Union primary law whilst fully respecting the principles of reciprocity, equity, symmetry and non-discrimination.