



A joint initiative of



Brussels School  
of International  
Studies



## Towards a Citizens' Manifesto for Brexit

“Brexit and Citizens’ Rights: Where Do We Go From Here?”

20 June 2017

**Anthony Valcke**

# Council's negotiation guidelines on Brexit

“8. ... Agreeing reciprocal guarantees to safeguard the status and rights derived from EU law at the date of withdrawal of EU and UK citizens, and their families, affected by the United Kingdom's withdrawal from the Union will be the first priority for the negotiations.

**Such guarantees must be effective, enforceable, non-discriminatory and comprehensive**, including the right to acquire permanent residence after a continuous period of five years of legal residence. ...”

# Draft terms of withdrawal

- \* European Commission, Working paper “Essential Principles on Citizens’ Rights”, Draft, 24 May 2017

# Who will benefit from acquired rights?

WP Essential Principles	Manifesto
EU citizens living in UK + family members	✓
UK citizens living in EU 27 + family members	✓
EU citizens working or having worked in UK	✓
?	+ family members ( <i>Ibrahim / Teixeira</i> carers)
UK citizens working or having worked in EU 27	✓
?	+ family members ( <i>Ibrahim / Teixeira</i> carers)
?	Zambrano and Chen carers
?	+ UK citizens living or working in IS, LI, NO & CH + family members
?	+ IS, LI, NO & CH citizens living or working in UK + family members
UK and EU citizens + family members with present and future social security rights	✓
?	+ UK citizens having been subject to IS, LI, NO & CH rules + IS, LI, NO & CH citizens having been subject to UK rules

# Why does it matter to include EFTA nationals?

UK nationals in...	<i>Eurostat 2016</i>	Nationals in UK from...	<i>ONS + UN estimates 2015</i>
Switzerland	41,766	Norway	18,000
Norway	16,303	Switzerland	11,000
Iceland	756	Iceland	501
Liechtenstein	51	Liechtenstein	33
<i>Total</i>	<i>58,886</i>	<i>Total</i>	<i>29,534</i>

Sources: Eurostat, Population on 1 January 2016 by age group, sex and citizenship;  
Office for National Statistics, Population of the United Kingdom by Country of Birth and Nationality;  
UN Population Division, Trends in International Migrant Stock: Migrants by Destination and Origin

# What rights are concerned?

WP Essential Principles	Manifesto
Equality of treatment (Art 18 TFEU)	✓
Residence rights (Art 21 TFEU) + Directive 2004/38 + <i>Singh</i> right to return home	+ <i>Chen</i> carers
Free movement of workers (Art 45 TFEU) + Regulation 492/2011	+ <i>Ibrahim / Teixeira</i> carers
Social security (Art 48 TFEU) + Regulations 883/2004 and 987/2009	+ instruments of the Administrative Commission
Freedom of establishment (Art 49 TFEU)	+ Services Directive 2006/123
Mutual recognition on professional qualifications	Art 53 TFEU, Directives 2005/36 and 98/5
?	+ Art 20 TFEU ( <i>Zambrano</i> carers)
?	+ Directive 2006/106 on driving licences
?	+ Charter of Fundamental Rights
?	+ Article 24 TFEU (complaints, petitions and recourse to EO)
?	+ Regulation 1049/2001 (access to public documents)

# When will acquired rights vest?

## WP Essential Principles

## Manifesto

Effective date of UK's withdrawal from EU



?

+ transitional period of at least two years

# What enforcement mechanisms apply?

WP Essential Principles	Manifesto
Commission monitors and prosecutes	+ CH in UK and UK in CH
CJEU jurisdiction	✓
?	+ EFTA Surv Auth monitors and prosecutes for UK in NO, IS, LI + NO, IS, LI in UK
?	+ EFTA Court jurisdiction for UK in NO, IS, LI + NO, IS, LI in UK
?	+ recourse to SOLVIT problem solving network
?	+ recourse to information & advice on Your Europe
?	+ acquired rights are binding on public and private bodies



# What else should be done now?

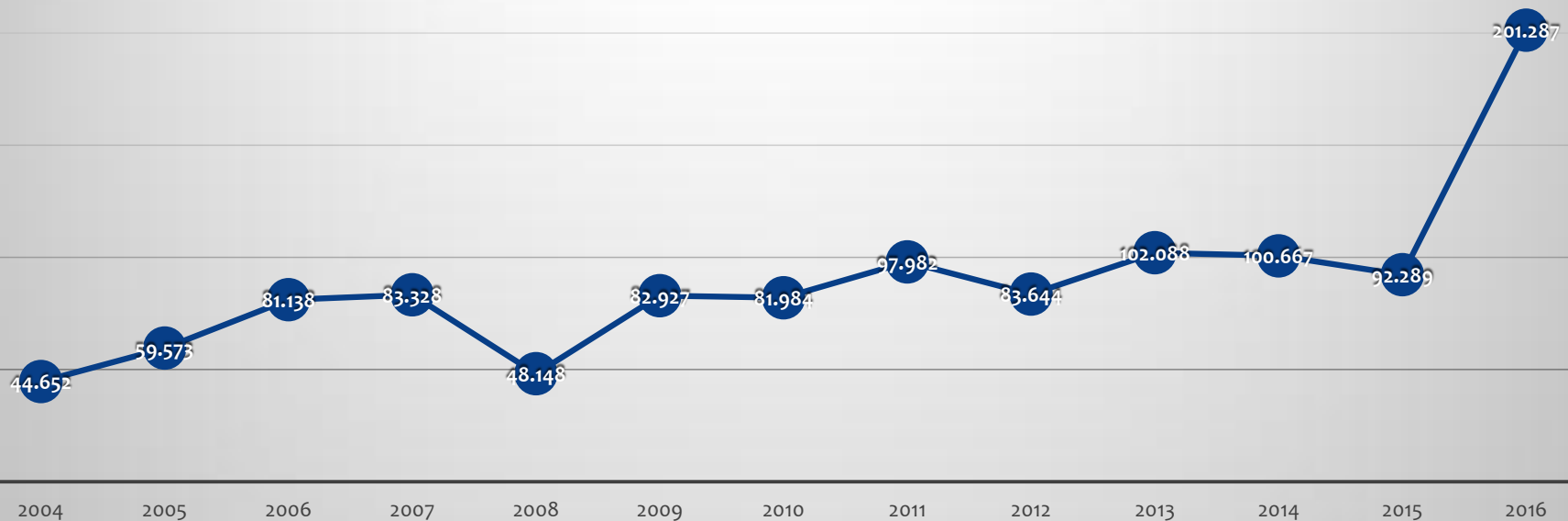
# Council's negotiation guidelines on Brexit

“8. ... Citizens should be able to exercise their rights through smooth and simple administrative procedures.”

# EEA applications

(total applications by year for residence and permanent residence by EEA nationals and family members)

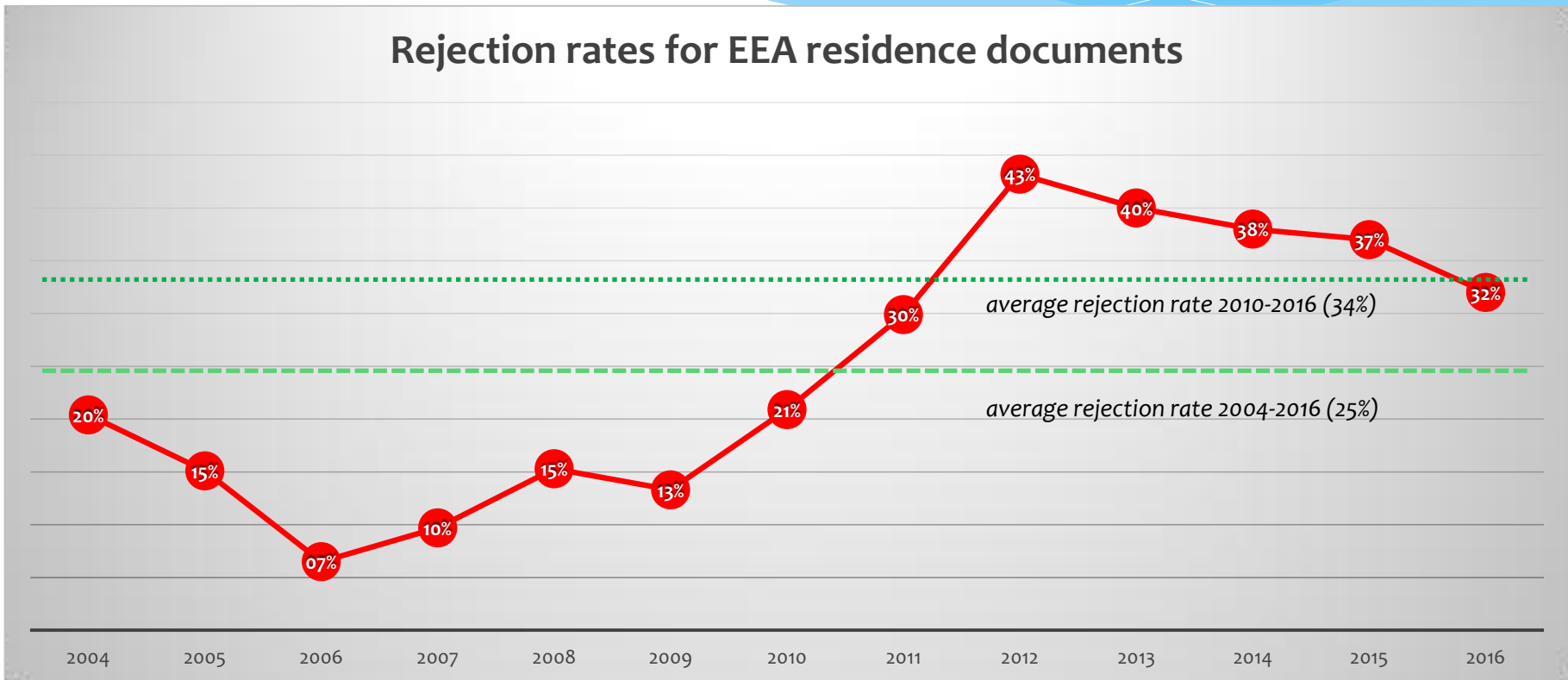
## Applications for EEA residence documents



Source: Home Office Immigration Statistics - EEA tables (February 2017)

# Rejection rates (refusals and invalid applications)

Rejection rates for EEA residence documents



Source: Home Office Immigration Statistics - EEA tables (February 2017)

# Expulsion of EEA nationals from UK

## Removals and entry refusals

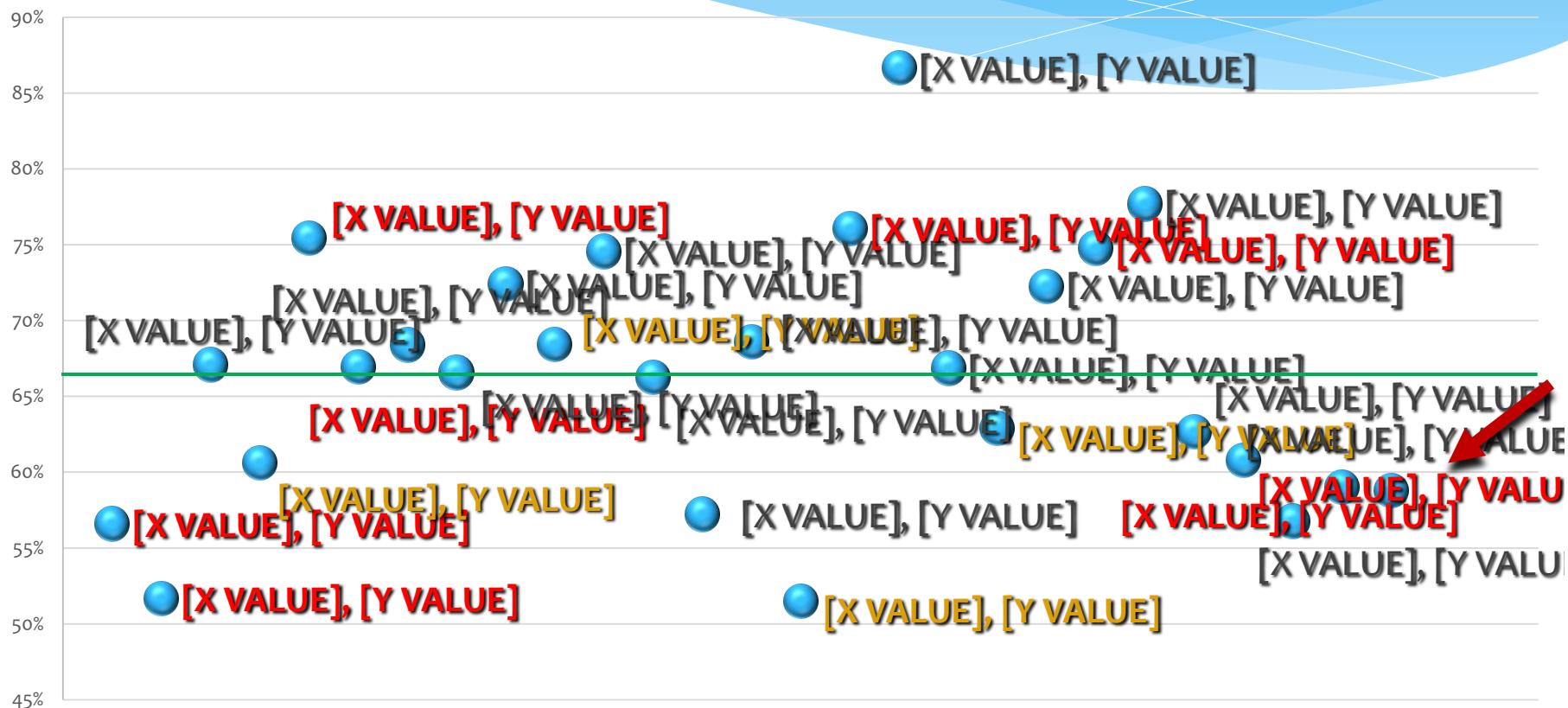


Source: Home Office Immigration Statistics - EEA tables (February 2017)

# What else should be done now?

- \* Restrictive interpretation of concept of “worker”
- \* Restrictive interpretation of concept of “retained worker status”
- \* Removal of appeal rights for “other family members”
- \* UK rules on comprehensive sickness insurance

# Transposition and application in EU27



Sources: COM(2008) 840; 'Evaluation of EU rules on free movement' (2013)

# Some solutions

- \* Comprehensive sickness insurance:
  - \* Art 258 TFEU infringement procedure against UK (2011/2054)
  - \* Acceptance that reliance on public healthcare system meets requirement for comprehensive sickness insurance
  - \* Waiving of restrictive national rules on comprehensive sickness insurance
  - \* UK authorities to accept voluntary (and retrospective) contribution to NHS through healthcare surcharge
- \* Amendments to Immigration (EEA) Regulation 2016 should be fully reviewed by Commission as a matter of urgency



# What else should be done now?

- \* Exclusion of EU nationals from public health system
  - \* Italy, France, Spain
- \* Solution:
  - \* Acceptance that reliance on public healthcare system meets requirement for comprehensive sickness insurance

# Further information

[rights.clinic@ecas.org](mailto:rights.clinic@ecas.org)

- \* EU Rights Clinic blog
- \* <http://blogs.kent.ac.uk/eu-rights-clinic/>