

**PETITION
TO THE EUROPEAN PARLIAMENT
CONCERNING
THE PROTECTION OF
CITIZENS RIGHTS IN THE CONTEXT OF BREXIT
AND
THE NEGOTIATION OF THE TERMS OF WITHDRAWAL OF
THE UNITED KINGDOM FROM THE EUROPEAN UNION**

PETITION SUBMITTED PURSUANT TO ARTICLES 20 AND 227 TFEU

URGENT – FOR IMMEDIATE ACTION



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Executive summary:

1. This Petition is submitted jointly by the EU Rights Clinic and other 80 signatories listed in Annex I. Further information on the main petitioner is contained in Section 1 of this complaint.
2. This Petition seeks to obtain urgent action from the European Parliament in order to remedy the gaps and omissions in the legal protection that have so far been negotiated by the European Commission in respect of the UK's withdrawal from the European Union.
3. It has become apparent from our discussions with the European Commission and the Council of the EU that the draft Withdrawal Agreement which gives further expression to the Joint Report of 8 December 2017¹ will not fully cover the entire spectrum of rights which all EU citizens and family members presently enjoy in connection with residence, work and equal treatment under EU law.
4. In this respect, we therefore consider that the statement made by the Commission in its Communication of 8 December 2017² that "the Joint Report means that both Union citizens and United Kingdom nationals, as well as their respective family members can continue to live, work or study as they currently do under the same conditions as under Union law, benefiting from the full application of the prohibition of any discrimination on grounds of nationality" is not correct as a matter of law and fact.

¹ Joint Report from the negotiators of the EU and the UK Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union of 8 December 2017 < >

² Communication from the Commission to the European Council (Article 50) on the state of progress of the negotiations with the United Kingdom under Article 50 of the Treaty on European Union, COM(2017) 784 final <https://ec.europa.eu/commission/sites/beta-political/files/1_en_act_communication.pdf>.

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5. Indeed, it has been confirmed to us in writing by the Commission’s Brexit Task Force that the certain categories of EU citizens and family members who currently enjoy rights of residence, work and equal treatment under EU law have been excluded from the Joint Report and are not beneficiaries of the draft Withdrawal Agreement.
6. This essentially concerns two categories of persons:
 - (i) family members of EU citizens who have returned home after having resided in another Member State as recognised by the Court of Justice’s ruling in Case C-370/90 *Surinder Singh* and subsequent case law, as regards both those who have returned home before Brexit and those who are exercising free movement rights on the date of the UK’s withdrawal from the EU and who will return to their home Member State after that date; and
 - (ii) primary carers of Union citizens having a right of residence in the EU citizens’ home country arising from the Court of Justice’s ruling in Case C-34/09 *Ruiz Zambrano* and subsequent cases.
7. Moreover, the rights to continuous free movement of British citizens who are currently residing in an EU27 Member State have also been excluded from the scope of the Joint Report and such existing rights are not protected by the draft Withdrawal Agreement.
8. Finally, certain other related issues have also been excluded from the scope of the the Joint Report. Their absence from the draft Withdrawal Agreement is likely to adversely affect the ability of EU citizens to protect their rights of residence after Brexit occurs. These issues include:
 - (i) ensuring that the commitments made by the UK not to require inactive EU citizens and their family members residing in the UK to demonstrate that they hold “comprehensive sickness insurance” for the purposes of determining any application to obtain “settled status”;
 - (ii) ensuring that the commitments made by the UK not to impose a requirement on EU citizens in work to demonstrate “genuine and effective work” by reference to the primary earnings threshold under national law for the purposes of determining any application to obtain “settled status”;
 - (iii) ensuring that the interpretation of residence rights by the Member States fully reflects the conditions applicable under EU law in order to avoid a restrictive application of concepts of EU law (such as, but not, limited to “worker”, “genuine and effective work”, “genuine chance of being engaged”, “person having retained the status of a worker or self-employed person”, “comprehensive sickness insurance”) which might otherwise lead to a refusal to recognise the rights of residence or permanent residence to UK citizens and their family members in the EU27; and

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- (iv) ensuring that restrictions taken on grounds of public policy or security related to conduct after the end of the transitional period will at the very least involve an individual assessment that complies with the principles of proportionality and equality, adhere to fundamental and human rights and provide for procedural safeguards and full rights of appeal.
9. We are therefore seeking urgent and immediate action by the European Parliament to issue a resolution addressed to the European Council and the European Commission calling upon the inclusion of the following additional provisions in the Withdrawal Agreement:
- (i) provision for the protection of the acquired rights of family members of EU citizens who have returned home after having resided in another Member State as recognised by the Court of Justice’s ruling in Case C-370/90 *Surinder Singh* and subsequent cases, as regards both those who have returned home before Brexit and those who are exercising free movement rights on the date of the UK’s withdrawal from the EU and who will return to their home Member State after that date;
 - (ii) provision for the protection of the acquired rights of primary carers of Union citizens having a right of residence in the EU citizens’ home country arising from the Court of Justice’s ruling in Case C-34/09 *Ruiz Zambrano* and subsequent cases;
 - (iii) enshrining the commitments made by the UK on “comprehensive sickness insurance” and “genuine and effective work” into the Withdrawal Agreement;
 - (iv) provision to safeguard against the current restrictive interpretation of the EU free movement rules by the UK and the other 27 Member States that risks jeopardising the ability of EU citizens and UK nationals to rely on the Withdrawal Agreement;
 - (v) provision for the protection of the continuing right of free movement in EU 27 Member States of British citizens who are currently residing in a host Member State other than the UK;
 - (vi) provision for the inclusion of additional safeguards in the Withdrawal Agreement to ensure that restrictions on grounds of public policy or security related to conduct after the end of the transitional period must involve an individual assessment that complies with the principles of proportionality and equality, adhere to fundamental and human rights and provide for procedural safeguards and full rights of appeal.
10. There is a serious risk that, if the areas of concern that we have identified above remain unaddressed and are not the subject of explicit protections in the Withdrawal Agreement, those EU citizens and family members who are affected will be unable to ensure they can continue to benefit from the EU personal rights which they presently enjoy.
11. We are confident that the European Parliament shares our desire to prevent - post-Brexit - the occurrence of situations whereby EU citizens or family members will be

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deprived of the rights that they previously enjoyed as a matter of EU law before the UK's withdrawal from the EU.

12. We therefore call upon the European Parliament to.

- (i) register this petition as admissible,
- (ii) request information from the Council and the Commission on the actions which they intend to take in respect of the gaps and omissions of the Withdrawal Agreement which have been identified in this petition;
- (iii) request information from the UK Government on the actions which it intends to take to resolve the issues which have been identified in this petition;
- (iv) conduct an urgent public hearing on the petition in the presence of the petitioners, the Council and the Commission;
- (v) draw up an own-initiative report that recommends further action to be taken by the Council and the Commission to address the gaps and omissions of the Withdrawal Agreement which have been identified in this petition;
- (vi) submit a short motion for a resolution by the European Parliament calling on the Council and Commission to address the gaps and omissions of the Withdrawal Agreement which have been identified in this petition; or in the alternative, issue an opinion or recommendation to the Council and the Commission to address these gaps and omissions.

13. We also call upon the European Parliament to recommend to the European Commission to ensure that the Withdrawal Agreement is amended to incorporate the following additional provisions:

- (i) **Surinder Singh family members:** Article 9 (Personal Scope) of the Withdrawal Agreement should contain additional wording to ensure that both EU citizens and UK nationals – together with their respective family members – are able to benefit from the protections of the Withdrawal Agreement when they return home after exercising free movement rights in the UK and EU 27 respectively. The definitions of “host State” in Article 8 (*Definitions*) should be amended accordingly.
- (ii) **Zambrano carers:** Article 9 (*Personal Scope*) of the Withdrawal Agreement should contain additional wording to ensure that the third-country national primary carers of UK nationals residing in the UK are able to benefit from the protections of the Withdrawal Agreement after the UK's withdrawal from the EU. The definitions of “host State” in Article 8 (*Definitions*) should be amended accordingly. Article 12 (*Residence rights*) should also refer to residence rights under Article 20 TFEU in order to encapsulate the Court of Justice's ruling in Case C-34/09 *Ruiz Zambrano* and subsequent cases.

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- (iii) **Enshrining UK commitments on CSI and worker status:** the Withdrawal Agreement should contain additional wording to enshrine commitments made by the UK:
- a. the UK's commitment not to require inactive EU citizens and their family members residing in the UK to demonstrate that they hold "comprehensive sickness insurance" for the purposes of determining any application to obtain "settled status"; and
 - b. the UK's commitment not to impose a requirement on EU citizens in work to demonstrate "genuine and effective work" by reference to the primary earnings threshold under national law for the purposes of determining any application to obtain to obtain "settled status".
- (iv) **Preserve all appeal rights and maintain continued access to EU assistance services (SOLVIT and YEA):** The Withdrawal Agreement should contain additional provisions which preserve and maintain:
- a. the current right of appeal which EU citizens and their family members can invoke in respect of other personal rights protected by the Withdrawal Agreement, namely workers' rights (Articles 22-24), professional qualifications (Articles 25-27) and social security rights (Articles 28-31); and
 - b. access to the EU's assistance services - SOLVIT and Your Europe Advice - for the benefit of EU citizens living in the UK and UK nationals living in EU 27, together with their family members, at the very least for the period of 8 years following the end of the transitional period specified in Article 151.
- (v) **Issue public compliance reports during the transitional period:** The Withdrawal Agreement should explicitly require both the Commission and Independent Authority to be established under Article 152 to review the state of implementation of the EU free movement rules (Articles 20, 21 and 45 TFEU as well as Directive 2004/38) in the EU27 Member States and the UK respectively, and issue detailed reports identifying instances of non-compliant transposition, application or enforcement that may act as a restriction on the ability of EU citizens and UK nationals to rely on the protections of the Withdrawal Agreement.
- (vi) **Guaranteeing future free movement rights of UK nationals residing in the EU27:** The Withdrawal Agreement should contain additional provisions which guarantee the future free movement rights across the whole EU for UK citizens who are resident in an EU27 Member State at the end of the transitional period.
- (vii) **The best interests of the child should be an explicit consideration:** Article 4 of the Withdrawal Agreement should make an explicit reference to the best interests of the child.

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- (viii) **Maintaining adequate safeguards on the use of public policy and public security restrictions:** The Withdrawal Agreement should contain additional safeguards in the Withdrawal Agreement to maintain current protections and ensure that restrictions on grounds of public policy or security related to conduct after the end of the transitional period must involve an individual assessment that complies with the principles of proportionality and equality, adhere to fundamental and human rights and provide for procedural safeguards and full rights of appeal.

Petition submitted on 9 July 2018

by

Anthony Valcke
EU Rights Clinic

On behalf of the following 80 signatories:

Alphia Abdikeeva, Director, Pro Igual
Alberto Alemanno, Co-Founder and Director, The Good Lobby
Elspeth Attwooll, former Member of the European Parliament for Scotland and honorary affiliate of University of Aberdeen Law School
Diana Baxter, Partner, Wesley Gryk Solicitors LLP
Sue Bent, Chief Executive, Central England Law Centre
Lapo Bettarini, Founding Member, Europe4People
Julie Bishop, Director, Law Centres Network
Brad K. Blitz, Professor of International Politics, Middlesex University and London School of Economics
Dr Justin Borg-Barthet, Senior Lecturer in Law, University of Aberdeen
Noreen Burrows, Emeritus Professor of European Law, University of Glasgow
Nichola Carter, Director and Principal Solicitor, Carter Thomas Solicitors
Roger Casale, Chief Executive Officer, New Europeans
Celia Clarke, Director, Bail for Immigration Detainees (BID)
Irene Couzigou, Senior Lecturer in Law, University of Aberdeen
Scott Crosby, Avocat and, Adjunct Professor of Human Rights, Vesalius College
Dr Egle Dagilyte, Senior Lecturer in Law, Anglia Ruskin University
Seb Dance MEP, European Parliament
Dr Leyla De Amicis, Glasgow Caledonian University
Ellen Desmet, Assistant Professor of Migration Law, Human Rights and Migration Law Clinic, Ghent University
Costanza de Toma, Co-Chair, Advocacy Group, the3million
Kamena Dorling, Head of Policy & Public Affairs, Coram Children's Legal Centre
Mo Egan, Solicitor and Lecturer in Law, University of Stirling
Matthew Evans, Director, The AIRE Centre
Magda Faltová, Director, Association for Integration and Migration
Michael Fawole, Centre Director, North East Law Centre
Maria Fletcher, Senior Lecturer in Law, University of Glasgow
Jane Golding, Solicitor and Chair, British in Europe
Lucila Granada, Director, Latin American Women's Rights Service

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Elsbeth Guild, Jean Monnet Professor ad personam, Queen Mary University of London and Radboud University Nijmegen
Nicolas Hatton, Founding Co-Chair, the3million
Anne Hernandez, Presidenta, Brexpats in Spain
Erica Howard, Associate Professor of Law, Middlesex University
Elizabeth Kardynal, Director, European's Welfare Association CIC
Assya Kavrakova, Director, European Citizen Action Service (ECAS)
Brian Killoran, Chief Executive Officer, Immigrant Council of Ireland
Eleonore Kofman, Professor of Gender, Migration and Citizenship, Middlesex University and London School of Economics
Cristoph Krieger, Medi Buero Kiel
Jean-Michel Lafleur, Associate Director, Centre for Ethnic and Migration Studies, Université de Liège
Jean Lambert MEP, European Parliament
Thorsten Lauterbach, Teaching Fellow, Robert Gordon University Aberdeen
An Sofie Leenknecht, Human Rights Coordinator, European Disability Forum
Michele LeVoy, Director, Platform for International Cooperation on Undocumented Migrants
Carole Lyons, Lecturer in Law, Robert Gordon University Aberdeen
Willem Maas, Jean Monnet Chair of Political Science, Glendon College, York University
Dr Sandra Mantu, Centre for Migration Law, Radboud University Nijmegen
Patrick Marples, Chief Executive Officer, South West London Law Centres
Joylon Maugham QC, Director, Good Law Project
Nicolas Maulet, Lecturer in Law, Robert Gordon University Aberdeen
Jose Miguel Morales García, Secretary General, Andalucía Acoge
Dr Clare Frances Moran, Lecturer in Law, Edinburgh Napier University
Elisa Morgera, Professor of Global Environmental Law, Strathclyde University
Dr Charlotte O'Brien, Senior Lecturer in Law, University of York
Laurent Pech, Professor of European Law, Middlesex University
Steve Peers, Professor of EU, Human Rights & World Trade Law, Essex University
Rosa Pérez Monclús, Senior Policy Officer, Culture Action Europe
Lucy Polo Castillo, President, Asociación Por Ti Mujer
Dr Anni Pues, Rechtsanwältin and Lecturer in Law, University of Glasgow
Nazek Ramadan, Director, Migrant Voice
Jasmin Redjepi, NGO Legis, Macedonia
Caroline Robinson, Director, Focus on Labour Exploitation
Dr Pierre Schammo, Reader in Law, Durham University
Annette Schrauwen, Professor of European integration, University of Amsterdam
Molly Scott Cato MEP, European Parliament
Jo Shaw, Professor of Law, Salvesen Chair of European Institutions, University of Edinburgh
John Shaw, Chairman and Spokesperson, Fair Deal for Expats
Anthony Simpson, Representative, Retaining European Citizenship ECI
Stijn Smismans, Professor of Law, Jean Monnet Chair in European Law and Governance, Cardiff University
Iyiola Solanke, Professor of EU Law and Social Justice, University of Leeds
Eleanor Spaventa, Professor of European Law, Durham University
Freek Spinnewijn, Director, FEANTSA

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Dr Bernard Steunenberg, Professor in Public Administration and Ad Personam Jean Monnet Chair in European Politics, Leiden University

Sergio Tavares, Council of the Portuguese Diaspora / Conselho das Comunidades Portuguesas (UK and Ireland)

Dr Jeff Turk, Research Fellow, KU Leuven

Dr Anthony Valcke, Supervising Solicitor, EU Rights Clinic

Yannis Vardakastanis, President, European Disability Forum

Herwig Verschueren, Professor of International and European Labour and Social Security Law, University of Antwerp

Fabrizio Vittoria, Legal Consultant, Göteborgs kyrkliga stadsmission-City Mission Gothenburg

Sue Wilson, Chair, Bremain in Spain

Leanne Wood AM, Welsh Assembly

Colin Yeo, Barrister, Garden Court Chambers

Ruvi Ziegler, Associate Professor in International Refugee Law, University of Reading