

24 May 2017

TF50 (2017) 1 - Commission to EU 27

Subject: Working paper "Essential Principles on **Citizens' Rights**"

Origin: European Commission, Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 TEU

Objective: For discussion at the Council Working party (Art. 50) of 30 May 2017

Remarks: The attached working paper on "Essential Principles on **Citizens' Rights**" contains the main principles of the EU position in this regard, to be presented to the UK in the context of negotiations under Art. 50

Essential Principles on Citizens' Rights

The Withdrawal Agreement should protect the rights of EU27 citizens, UK nationals and their family members who, at the date of entry into force of the Withdrawal Agreement, have enjoyed rights relating to free movement under Union law, as well as rights which are in the process of being obtained and the rights the enjoyment of which will intervene at a later date *[for example pension rights]*.

I. General principles:

The following general principles should apply in accordance with Union law, as interpreted by the Court of Justice of the European Union at the date of entry into force of the Withdrawal Agreement *[including also interpretations given in cases pending on the date of withdrawal for which the Court's competence is maintained pursuant to the Withdrawal Agreement]*:

- (1) Same level of protection as set out in Union law at the date of withdrawal of EU27 citizens in the UK and of UK nationals in EU27 including the right to acquire permanent residence after a continuous period of five years of legal residence;
- (2) Equal treatment in the UK of EU27 citizens as compared to UK nationals, and in EU27 of UK nationals as compared to EU27 citizens, in accordance with Union law;
- (3) Equal treatment amongst EU27 citizens by and in the UK in all matters covered by the Withdrawal Agreement, without prejudice to Common Travel Area arrangements between the UK and Ireland;
- (4) EU27 citizens or UK nationals who resided legally respectively in the UK or EU27 at the date of entry into force of the Withdrawal Agreement should be considered legally resident even if they do not hold a residence document evidencing that right. Documents to be issued in relation to these rights should have a declaratory nature and be issued either free of charge or for a charge not exceeding that imposed on nationals for the issuing of similar documents;
- (5) All citizens' rights set out in the Withdrawal Agreement should be granted as directly enforceable vested rights in both the UK and in EU27 as specified in Section IV.

II. Personal scope:

The Withdrawal Agreement should apply to the following persons as covered by the Treaty and secondary Union law:

- (a) EU27 citizens who reside or have resided in the UK at the date of entry into force of the Withdrawal Agreement;
- (b) UK nationals who reside or have resided in EU27 at the date of entry into force of the Withdrawal Agreement;
- (c) The family members of the persons referred to in points (a) and (b), regardless of their nationality, as covered by Directive 2004/38, who have joined or will join the holder of the right at any point in time after the date of entry into force of the Withdrawal Agreement *[i.e. current and future family members]*;
- (d) EU27 citizens who work or have worked in the UK at the date of entry into force of the Withdrawal Agreement, whilst residing in EU 27, and UK nationals who work or have

worked in EU27 at that date, whilst residing in the UK or in another EU27 Member State than that of employment, and their family members regardless of place of residence [*e.g. frontier workers*];

- (e) EU27 citizens and UK nationals and their family members covered by Regulation 883/2004 on the coordination of social security systems who, at the date of entry into force of the Withdrawal Agreement, are or have been subject to the legislation of an EU27 Member State for UK nationals, or UK legislation for EU27 citizens [*i.e. who have (i) left the UK or EU27 at the date of entry into force of the Withdrawal Agreement, but have aggregated periods for the calculation of future income replacing benefits (old age benefits, cash sickness benefits, invalidity benefits, survivor benefits and benefits in respect of accidents and work and occupational diseases), or (ii) who have left the UK or EU27 at the date of entry into force of the Withdrawal Agreement and currently already enjoy export of income replacing benefits (for example pensioners)*]

III. Material scope:

- (1) The material scope should cover the rights set out in:
- (a) Articles 18 [*equal treatment of students*], 21 [*citizens – free movement*], 45 [*“workers” as defined by the Court of Justice of the European Union*], 48 [*social security*] and 49 TFEU [*“self-employed” as defined by the Court of Justice of the European Union*];
 - (b) Directive 2004/38 [*workers and jobseekers, self-employed, students, economically in-actives – non-discrimination, entry, residence, family reunification, protection against expulsion*];
 - (c) Regulation 492/2011 [*workers and jobseekers - non-discrimination, access to the labour market, to pursue an activity, and non-discrimination as regards working conditions, social and tax advantages, workers' and family members' access to education, apprenticeship and vocational training, housing, collective rights*];
 - (d) Regulation 883/2004 and the implementing Regulation 987/2009 [*i.e. the principles of coordination and cooperation between national authorities, for example on the reimbursement by the competent Member State of planned and unplanned healthcare*:
 - *one applicable legislation only: you are covered by the legislation of one country at a time so you only pay contributions in one country. The decision on which country's legislation applies will be made by the social security institutions on the basis of Regulation 883/2004;*
 - *aggregation of periods: where you claim a benefit, your previous periods of insurance, work or residence in other countries are taken into account;*
 - *export of benefits: if you are entitled to a cash benefit from one country, you may generally receive it even if you are living in a different country. This applies for example to old-age pensions;*
 - *waiving of residence rules: if you are entitled to a benefit for one of your family members, you cannot be deprived of that benefit if that family member does not live in the same country as you. This applies for example to family and unemployment benefits;*
 - *equal treatment with UK nationals in the UK: you have the same rights and obligations as the nationals of the country where you are covered.];*
 - (e) The Withdrawal Agreement should ensure, in the UK and in EU27, the protection, pursuant to Union law applicable at the date of entry into force of the Withdrawal

Agreement, of recognised professional qualifications (diplomas, certificates and other evidence of formal qualification) obtained in any of the EU28 Member States before that date. The Agreement should also ensure that professional qualifications (diplomas, certificates or other evidence of formal qualification) obtained in a third country and recognised in any of the EU28 Member States at the date of entry into force of the Withdrawal Agreement in accordance with Union law applicable before that date should continue to be recognised also after that date. It should also provide for arrangements relating to procedures for recognition which are ongoing at the date of withdrawal; *[this should be without prejudice to rules in the UK and EU27 governing the provision of cross-border services or secondary establishment.]*

- (2) The rights of the right holders set out in paragraph 1, and the derived rights of their family members, should be protected for life, provided that conditions of Union law are met *[for example, where the right holder dies, in the event of divorce or if the right holder leaves the host State before the divorce, the family member will continue to have derived rights under the conditions set out in Directive 2004/38].*
- (3) EU27 citizens and UK nationals can continue to change status and to accumulate periods leading to rights pursuant to Union law during the period of protection of the Withdrawal Agreement *[A student can still become an "EU worker" after end of studies without having to comply with immigration law for third-country nationals, an in-active citizen can become a worker and still be covered by EU rules and a person who resided legally in the UK for less than five years by the date of the entry into force of the Withdrawal Agreement can continue to accumulate the necessary five years residence giving access to permanent residence rights].*
- (4) For rights and obligations set out in Regulations 883/2004 and 987/2009 on the coordination of social security systems, a mechanism should be established to incorporate future amendments to those regulations in the Withdrawal Agreement.

IV. Enforcement and dispute settlement rules

- (1) The Commission should have full powers for the monitoring and the Court of Justice of the European Union should have full jurisdiction corresponding to the duration of the protection of citizen's rights in the Withdrawal agreement.
- (2) Citizens should thus be able to enforce their rights granted by the Withdrawal Agreement in accordance with the same ordinary rules as set out in the Union Treaties on cooperation between national courts and the Court of Justice, i.e. including a mechanism analogous to Article 267 TFEU for preliminary reference from UK courts to the Court of Justice of the European Union.