

AFCO Committee – 8 Oct 2019

I am speaking on behalf of British in Europe, the largest coalition of UK citizens' groups across the EU 27, defending the rights of over 1.2 million UK nationals living in the EU27, 80% of whom are of working age or younger. More than 60% were unable to vote in the UK Referendum because British mobile citizens lose their vote after 15 years outside the UK. Together with our friends, the 3 million living in the UK, we make up nearly one third of all EU citizens who fully use their right of free movement.

The situation of these EU citizens, who have lived in uncertainty for more than three years now, is even more uncertain than it was in March. With 24 days to go until 31 October, the UK is in the throes of a constitutional crisis, and there is no clarity whether there will be a deal or not. We have all been badly let down by the UK government, which, for all its protestations to the contrary, never made its own citizens living in the EU 27 a priority.

I have been an EU citizen in some form or another since the age of 7 – for 46 years. At the age of 14 I decided I wanted to 'work in Europe' and I went on to study for a Maîtrise in Paris and then live and work in Belgium, Italy and now Germany. These are the opportunities that EU citizenship and free movement have given me.

In 1991, two years after the Fall of the Berlin Wall, I met my husband, a former GDR citizen, who had only just become an EU citizen at age 27. My husband, as a former GDR citizen, knows about hard borders and the value of free movement and understands why it means so much to me.

The irony is that, because I married him and moved with him to his home town of Berlin 10 years ago, I could become a German citizen and will keep my EU citizenship while others will not. But that doesn't mean that all my rights are secured – and this loss of rights affects not just me but my whole European family, all of us EU citizens. It is the same for my Co-Chair, who is married to a German who arrived in Germany as a Chilean refugee, but who also spent a large part of his life in the UK. This is why the distinctions made in the context of the EU-UK negotiations between EU citizens in the UK and UK citizens in the EU 27 are artificial. Our lives are bound up with each other. You can't just roll back the developments of the last 30 years and deny the integration that has come with free movement.

My husband's key question in all of this is "why would we go backwards?"

Well it appears that the root of the problem is that the UK does want to go backwards, or at least part of the population does as well as the current government. But the EU does not need to go backwards too, especially on citizens' rights.

Let's go back to the beginning and look at what was promised to these citizens in May 2017. Michel Barnier said in Florence:

"The level of protection afforded under EU law must not be watered down.

Brexit should not alter the nature of people's daily lives."

The Essential Principles on Citizens' Rights in June 2017 said:

"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..”

So the starting point was: we will not go backwards and remove rights. Guy Verhofstadt confirmed that last week in the European Parliament when he said that the starting point of the negotiations was that our rights should continue as before.

During the negotiations, however, this was watered down to the concept that citizens should be able to continue their lives ‘broadly’ as before and with protection limited to ‘existing life choices’. As Guy Verhofstadt also said last week, when talking about UK settled status, ‘broadly as before’ means that it will not be the same. We agree with him. Moreover the 3 million and British in Europe also pointed out many times including in this place that life choices are made on the basis of rights, not vice versa, and that it was the rights that should be protected, not some sort of ‘lifestyle choice’.

So we were already going backwards, and some rights were to be removed.

Now we have reached the point where, if there is no deal, those EU rights deriving from EU law, which the EU said it would protect, would evaporate at EU level and nearly one third of all EU citizens who fully exercise their free movement rights in the EU would simply default to third country nationals overnight without any protection of their former status at EU level. They will lose all EU citizenship rights, while EU citizens in the UK will lose those rights they have exercised in the UK.

Now that is going backwards.

Note that I say at EU level and EU rights. No deal is a disaster for British in Europe and the 3 million as there will be 28 unilateral national solutions for the 5 million citizens most directly affected by Brexit, their status dependent on where they live. In other words, not an EU solution at all: instead the EU has outsourced the problem of UK citizens’ rights to the EU 27, encouraging the EU 27 to be generous (with varying degrees of success), while EU 27 citizens will have to rely on a UK national solution.

And for both groups, there will be no protection of an international treaty, and important reciprocal issues such as pensions and healthcare, as well as recognition of qualifications, will simply not be covered. Neither will there be clear adherence to the principles of non-discrimination or equal treatment, both covered by the citizens’ rights part of the Withdrawal Agreement.

As my colleague Dimitri Scarlato very aptly suggested recently in the European Parliament, this is like being on a sinking ship with lifeboats, ignoring the lifeboats and waiting instead for 28 different rescue boats with different rescue plans to arrive.

We recognise that the EU has several dilemmas. First, it has 5 million convinced Europeans who have exercised their EU citizenship rights, activated and owned them, in short, claimed them as individual rights. But the law has not moved with the reality of citizens owning their EU citizenship as an individual right because EU citizenship is still dependent on the relationship between states and state membership of the Union.

Of course the EU needs to protect the integrity of the internal market and the four freedoms in the context of its negotiations with the UK. But what is the point of the

European Union protecting that in the abstract if it does not protect the concrete exercise of the fundamental right of freedom of movement by the citizens who are at its heart?

Then, the EU owes a duty of care to all of its citizens, including British citizens in the EU 27. This is particularly pressing for the 3.6 million EU 27 citizens who may soon be living in a third country.

At the same time, a new Commission is due to take office under the banner of a Union that strives for more and with the pledge to listen to the people of Europe and strengthen our democracy. And, of itself, the idea of a European way of life that is about shared values, and principles including the rule of law and fundamental rights is positive. As well as the idea that aspirations for Europe evolve from generation to generation.

We would thus ask Frau Van der Leyen to listen to 5 million of the people of Europe and their families when we say that we are about to go backwards. The EU is missing an unprecedented opportunity to show that Europe goes beyond the national. It is missing an unprecedented opportunity to show that the fundamental rights of EU citizens matter. And it is missing the opportunity to recognise that not only the aspirations that we have for Europe but also our aspirations about EU citizenship have evolved.

So what can be done?

Guy Verhofstadt said last week that the best way to deal with this problem is ringfencing that is not ringfencing - unilateral engagements from both sides rather than a deal, where the UK states that even in the case of no deal it will guarantee the rights set out in the WA and implement them more favourably than it has offered to date, and that the 27 pledge unilaterally to do exactly the same.

If that is really the most to which the EU can aspire then certainly the unilateral offers need improvement. But let's be clear that this isn't ringfencing or protecting the EU rights we have acquired and exercised at all. It still doesn't solve the fundamental issue that in a no deal situation, the solution being proposed is that our EU rights evaporate and the problem is outsourced to 28 different countries, with no protection at EU level.

Guy Verhofstadt recognised that himself when he said with respect to settled status that, in a no deal situation, there would be no legal protection based on an international agreement, and the UK could unilaterally change the system even if citizens have acquired settled status. The same is of course true for the EU 27 and the status of British citizens in their countries.

But we have been told that ringfencing is impossible and that this reciprocal unilateral engagement approach is the only way to avoid an inflation of mini-deals which is simply a way for the UK to pick and choose its advantages in its future relationship with the EU. First citizens, and then it will be transport, fish etc. But this ignores three important facts. First, this is not about an advantage for the UK because both sides have a mutual interest in securing the rights of their citizens. Second, transport and fish were not the stated first priority in the negotiations. So it's a red herring, if you'll

pardon the pun. Third, if the UK seeks further mini-deals all the EU has to do is say “No”.

We do not yet know what will happen by 31 October but this situation of uncertainty for citizens cannot continue. **If an Article 50 extension is agreed, citizens need the EU to commit to EU-level ringfencing as soon as the extension commences and that must be an EU-wide solution.** This is because ringfencing at the last moment is **impossible**, as it would require both UK-EU agreement on it, ratification by the British and European Parliaments, and legislation implementing it to be passed in the UK Parliament before it can ratify; and all of this has to take place before exit date. And it **cannot** be done after Brexit, and thus outside of the scope of Article 50, because ratification through 27 national Parliaments would be required.

So British in Europe and the 3 million are not asking for anything to be re-negotiated, but are asking for what was already agreed for both sets of citizens to be saved rather than shredded.

These children of the European project look to you to recognise the duty of care that the EU owes to them. They call on you to recognise how urgently you need to protect five million of your most committed citizens, including young British adults who have grown up in other countries and are truly becoming citizens of nowhere in some cases.

Above all, please don't let down nearly one third of all EU citizens who have used their free movement rights and penalise them for being committed Europeans. If you do, you will not only undermine their belief in the European project but that of future generations as well.

British in Europe

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