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TF50 (2017) 10 - Commission to EU27

Subject: Citizens' rights

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

Remarks: The joint technical note attached summarises the UK and EU positions and compares them following the 2nd round of Art. 50 negotiations

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The working group completed a mapping of the alignment between the two parties' positions, to prioritise future discussions.

This table summarises the UK and EU positions and compares them. Green indicates convergence, red indicates divergence and yellow indicates where further discussion is required to deepen understanding.

TOPIC	DETAIL	EU POSITION	UK POSITION	ISSUES
Personal scope	EU nationals lawfully resident before the cut off date	Date of UK's withdrawal	Between the date of A50 trigger and date of exit	UK to clarify
		EU citizens resident in accordance with Art 6, 7, 12, 13, 14, 16 and/or 17 of Directive 2004/38	EU citizens resident in accordance with Art 6, 7, 12, 13, 14, 16 and/or 17 of Directive 2004/38	
		EU rules with usual margins of discretion	UK prepared to specify in the WA details of implementation such as lack of Comprehensive Sickness Insurance (CSI) or not testing 'genuine and effective' work	
	EU national posted workers	Not covered by the citizens' rights chapter of the WA (linked to cross-border services)	EU national posted workers at the cut off date within scope of WA	
	Frontier workers	Those who are working as a frontier worker at the point of UK's withdrawal (or considered within the definition of a frontier worker)	UK will consider offering reciprocal arrangements	

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		e.g. jobseeker for 6 months) fall within the scope of the WA insofar as they retain the status of a frontier worker		
	Current family members	<ul style="list-style-type: none"> ● Family members as defined in Article 2 of Directive 2004/38; and ● Other family members as defined under the combination of Article 3 of Directive 2004/38 and individual MS legislation (to the extent such facilitation has been provided for) who are resident in accordance with Art 2 and Art 3 on the date of UK's withdrawal 	<ul style="list-style-type: none"> ● Family members as defined in Article 2 of Directive 2004/38; and ● Other family members as defined under the combination of Article 3 of Directive 2004/38 and individual MS legislation (to the extent such facilitation has been provided for) who are resident in accordance with Art 2 and Art 3 on the date of UK's withdrawal 	
		Residents above will fall within the scope of the WA <u>as a family member</u>	Residents above will fall within the scope of the WA <u>as an independent right holder</u>	To clarify
		Family members with a retained right of residence who are resident in accordance with Article 12	Family members with a retained right of residence who are resident in accordance with Article 12	

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		and 13 2004/38 on the date of the UK's withdrawal will fall within the scope of the WA.	and 13 2004/38 on the date of the UK's withdrawal will fall within the scope of the WA.	
		Rights of EU child to pursue education (<i>Chen/Texiera</i>) protected for period of child's education	Rights of EU child to pursue education (<i>Chen/Texiera</i>) protected as independent right holder eligible for permanent residence	
Future family members	This is an issue of preserving rights under EU law and not an issue of equal treatment. Family members as defined in Directive 2004/38 who accompany or join the EU citizen <u>after</u> the date of withdrawal may continue to benefit from rights of residence under same provisions as current family members.	Equal treatment as between EU and British citizens as regards applicable rules. Future family members will be subject to the same rules that apply to non-EU nationals joining British citizens, or alternatively to the post-exit immigration arrangements for the EU citizens who arrive after the specified date.		
	Children born after UK's withdrawal would be able to join their parents <u>as a family member</u> (not a right holder)	Children born to an EU citizen parent with settled status in the UK after the date of withdrawal will be eligible		To clarify

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			to immediately acquire settled status or British citizenship if born in UK as an independent right holder	
Nature of the agreement	Source	International Treaty which creates obligations which are binding in international law on the Parties	International Treaty which creates obligations which are binding in international law on the Parties	
	Individual enforcement of rights	Directly effective provisions of agreement enforceable through the domestic courts of EU27 <u>and UK</u> (i.e. individuals can rely directly on WA provisions in front of domestic courts to override domestic implementing legislation)	Rights granted through UK law and enforceable through the domestic UK judicial system, but without the WA rights having a direct effect UK courts have regard to WA where implementing legislation is ambiguous	
	Role of CJEU			For discussion in Governance Group
	Monitoring and oversight	European Commission to monitor compliance	Commission monitoring body for EU27. UK prepared to consider establishment of an independent monitoring arrangement in the UK	
	Use of EU law concepts	EU law concepts used in WA interpreted in line with CJEU	EU law concepts used in WA interpreted in line with CJEU	

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		case law as at the point of the UK's withdrawal	case law as at the point of the UK's withdrawal	
	Future CJEU case law	Future CJEU case law to be taken into account	UK to consider	For discussion in Governance Group
Residence	Permanent residence	Conditions for acquiring PR as per Article 16 Directive 2004/38 (5 years residence as a worker/self employed person, student, self sufficient person, or family member thereof)	Minimum conditions for acquiring PR as per Article 16 Directive 2004/38 (5 years residence as a worker/self employed person, student, self sufficient person, or family member thereof)	
		EU rules with usual margins of discretion	UK prepared to specify in the WA details of implementation such as lack of CSI or not testing 'genuine and effective' work	
		Conditions for acquiring PR as per Article 17 Directive 2004/38 (retired people, permanent incapacity)	Conditions for acquiring PR as per Article 17 Directive 2004/38 (retired people, permanent incapacity)	
	Loss of permanent residence	Loss of permanent residence status after 2 years	Loss of permanent residence status after 2 years	

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			UK prepared to offer further flexibilities in <u>respect of citizens with strong ties in the UK</u> (e.g. students abroad for studying, overseas posting). UK seeks similar outcome from the EU on this point.	UK seeks similar outcome from the EU on this point
Temporary residence	Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 Directive 2004/38 – including right to change status (e.g. student to worker)	Temporary residence on the basis of <5 years but have fulfilled the conditions of Article 6 and 7 Directive 2004/38 - including right to change status (e.g. student to worker)		
Continuity of residence	Definition of continuity of residence as per Article 16 (3) (i.e. permitted absence of 6 months in any 12 or 12 months for an important reason e.g. childbirth)	Definition of continuity of residence as per Article 16 (3) (i.e. permitted absence of 6 months in any 12 or 12 months for an important reason e.g. childbirth)		
Criminality committed pre exit	Expulsion due to public security, policy or health as per Directive 2004/38	Expulsion for pre-exit activity on basis of public policy/security/health as per Directive 2004/38		
Criminality committed post exit	Expulsion due to public security, policy or health as per Directive 2004/38	Expulsion for post-exit activity assessed under UK immigration rules		

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	Administrative procedures - general	As per Directive 2004/38 current EU position is that documents are declaratory.	UK position is that rights are granted by Home Office, therefore documentation are constitutive in order to give certainty to EU citizens in the UK as to their status and enable them to prove that they have rights under the WA.	It will be necessary to identify beneficiaries of the WA through documentation
	Current holders of permanent residence certificate	Citizens shall be considered legally resident even if they do not hold a residence document evidencing that right.	Holders of Permanent Residence certificates need to reapply; UK ready to offer more streamlined administrative procedure. UK seeks clarification on how UK citizens in the EU will be identified as covered by the WA as a matter of practice.	
	Administrative procedures – criminality checks	EU position is that criminality checks cannot be conducted systematically	UK position that systematic criminality checks on applicants necessary to assess criminality/conduct criteria in application.	
	Administrative procedures – smooth and streamlined	As per EU 27 individual administrative procedures.	UK plans new caseworking system capable of handling volumes, suitable for handling the post-exit	Both sides to provide information on any changes in procedures and communications.

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	ID requirements for documentation as a beneficiary of the WA	As per Directive 2004/38 –valid passport or ID card	UK position is to verify identity of applicant through passport (preferred) or ID card, as permitted by EU rules. Biometric information (photo) may be required	
	Fees for documentation	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents	Free of charge or for a charge not exceeding that imposed on nationals for issuing of similar documents	
	Associated Rights	Equal treatment within the limits of Article 24 with respect to social security, social assistance, health care, employment and self-employment, education and training, social and tax advantages	UK settled status means: Equal treatment with respect to social security, social assistance, health care, employment and self-employment, education and training, social and tax advantages	
	Voting rights	EU position does not cover UK citizens' rights to vote and/or stand in local elections because this arises from EU citizenship rights	UK wants to protect existing rights of UK/EU citizens to vote and/or stand in local elections in their host state in the WA	
	Duration of rights	Life-long protection for the right holder as guaranteed by the Withdrawal Agreement	Life-long protection for the right holder as guaranteed by the Withdrawal Agreement	

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	Further movement rights	UK nationals in scope of WA only have protected rights in the state(s) in which they have residence rights on exit day	UK nationals in scope should be able to change their place of residence within EU27 as per Directive 2004/38	
Social security coordination	Personal scope	Personal scope of Regulation 883/2004 as covered in Article 2	Personal scope of Regulation 883/2004 as covered in Article 2	
	Personal scope – some third country nationals	As in Regulation 883/2004 except third country nationals that are not family members	Third country nationals in the UK continue to benefit from the previous EU coordination Regulation (1408/71) through Regulation 859/2003	UK to reflect further
	Personal scope – Aggregation	All those referred to in 883 – lifetime protection of rights, but contributions made in Member State other than State of residence covered by Regulation 1231/2010.	Recognise contributions made before exit. The UK is considering its position with regard to recognising contributions made after exit.	
	Equal treatment	Equal treatment under the conditions set out in EU law.	Equal treatment under the conditions set out in EU law.	
	Benefits	All those referred to in Regulation 883/2004	All those referred to in Regulation 883/2004	

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	Benefits – export of pensions	Lifetime export of uprated pension.	Lifetime export of uprated pension.	
	Benefits – export of other benefits	Lifetime export under conditions in Regulation 883/2004.	Guarantee export if exporting that benefit on the specified date, and guarantee parity with UK nationals if not.	
	Healthcare		UK seeks clarity as regards the entitlement and possible broader scope for those who exercised free movement in the past.	
	Coordination principles apart from export	All other coordination principles of Regulation 883/2004	All other coordination principles of Regulation 883/2004	
	Administrative cooperation	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009	Cooperation between national authorities as set out in Regulation 883/2004 and 987/2009	
Professional qualifications				To be discussed
Other economic rights				To be discussed