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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	ANNEX to the COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN CENTRAL BANK, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE, THE COMMITTEE OF THE REGIONS AND THE EUROPEAN INVESTMENT BANK Addressing the impact of a withdrawal of the United Kingdom from the Union without an agreement: the Union's coordinated approach Citizens' residence and social security entitlements: Coordinated approach in case of a withdrawal of the United Kingdom from the Union without a deal

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Delegations will find attached document COM(2019) 195 final ANNEX 2.

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Brussels, 10.4.2019  
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ANNEX 2

**ANNEX**

*to the*

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN  
PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN  
CENTRAL BANK, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE,  
THE COMMITTEE OF THE REGIONS AND THE EUROPEAN INVESTMENT  
BANK**

**Addressing the impact of a withdrawal of the United Kingdom from the Union without  
an agreement: the Union's coordinated approach**

**Citizens' residence and social security entitlements:  
Coordinated approach in case of a withdrawal of the United Kingdom from the Union  
without a deal**

## 1. INTRODUCTION

On 29 March 2017, the United Kingdom notified its intention to withdraw from the Union. The Commission continues to consider that an orderly withdrawal of the United Kingdom from the Union on the basis of the Withdrawal Agreement, which has been agreed by the United Kingdom Government and which the European Council (Article 50) endorsed on 25 November 2018, is the best outcome. The Commission continues to focus its efforts on that goal. However, two days before the deadline of 12 April 2019, as extended by the European Council<sup>1</sup>, the likelihood of a disorderly withdrawal of the United Kingdom from the Union has significantly increased.

## 2. CITIZENS' RESIDENCE RIGHTS

As of the withdrawal date, UK nationals<sup>2</sup> residing in the EU will no longer be EU citizens and thus will no longer enjoy free movement rights<sup>3</sup>. They will automatically be subject to the general rules that apply to third country nationals in the EU. Conversely, EU citizens residing in the United Kingdom will no longer be protected by the EU rules on free movement. This will have an impact on the right to stay and work where those UK nationals and EU citizens currently live.

### 2.1. Guaranteeing a continued right to reside for UK nationals already residing in the EU

The Commission has consistently made clear that protecting the legal status of UK nationals currently residing in the EU is a priority, and it has called upon Member States to adopt a generous approach towards them. There are different situations regarding the right to stay of UK nationals in EU27 Member States; for some situations national contingency measures have been taken, while others are adequately covered by existing rules.

Over the last months, EU27 Member States have prepared national contingency measures, in a process coordinated by the Commission, to **ensure continued legal residence in the immediate aftermath of a no-deal withdrawal for all UK nationals who are already legally residing** in a Member State at the moment of withdrawal. These measures will also facilitate the crossing of the internal and external borders of the EU immediately after withdrawal.

While the voluntary coordination of Member States' actions aims to ensure a coherent approach, the approaches and procedures chosen by the Member States may differ depending on their individual situation. Indeed, each Member State is faced with different challenges, depending on the number of UK nationals residing on its territory and its legal and administrative system.

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<sup>1</sup> European Council Decision 2019/476 taken in agreement with the United Kingdom of 22 March 2019 extending the period under Article 50(3)TEU, OJ L 80I, 22.3.2019, p. 1.

<sup>2</sup> The term 'UK nationals' should be understood as covering also their third-country family members already resident in the respective host State at the time of withdrawal.

<sup>3</sup> UK nationals who also have the nationality of an EU Member State remain EU citizens and fully retain free movement rights.

Member States have taken the necessary steps to adopt their respective national measures in due time and they have accordingly informed the Commission. The Commission compiles and publishes an up-to-date overview with the latest input on the national measures from the EU27 Member States on its Brexit Preparedness webpages<sup>4</sup> in order to inform UK nationals residing in the Union about their rights. At national level, Member States are taking numerous actions to reach out to UK nationals residing in their territory<sup>5</sup>. The Commission notes that the necessary measures are already in place now. **It urges those Member States, which have not yet finalised their adoption processes, to do so as quickly as possible.**

Member States' measures are largely convergent with some differences in terms of exact scope with regard to UK nationals already resident in their territory. Most Member States have opted for a form of targeted permanent or temporary national "regularisation" legislation. In many Member States the envisaged status and rights are inspired by the Free Movement Directive<sup>6</sup> or the Withdrawal Agreement. A number of Member States underline the importance of reciprocity by the United Kingdom as a guiding principle in their national measures.

UK nationals, who have already been lawfully resident in a Member State for over 5 years, have **access to the EU long-term resident status**, subject to meeting the conditions of Directive 2003/109/EC<sup>7</sup>. This is a solid status in the Member State of residence, anchored in Union law<sup>8</sup>, guaranteeing equal treatment with the nationals of that Member State and the right to move to live, work or study in another EU Member State, provided certain conditions are fulfilled<sup>9</sup>. The Commission recalls that it considers that periods of legal residence of UK nationals in an EU27 Member State before the withdrawal date should be considered as periods of legal residence in a Member State of the European Union in accordance with Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents<sup>10</sup>.

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<sup>4</sup> [https://ec.europa.eu/info/brexit/brexit-preparedness/residence-rights-uk-nationals-eu-member-states\\_en](https://ec.europa.eu/info/brexit/brexit-preparedness/residence-rights-uk-nationals-eu-member-states_en)

<sup>5</sup> Nearly all Member States are in contact with British embassies and consulates. Some also communicate via specific websites on residence issues and social media. Others publish leaflets; set up Brexit hotlines; reach out to NGOs and employers' organizations. Some Member States also individually contact each UK citizen residing on their territory.

<sup>6</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ L 158, 30.04.2004, p. 77.

<sup>7</sup> Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 016, 23.01.2004, p. 44. This Directive does not apply in Ireland or Denmark.

<sup>8</sup> For a recent overview of the implementation by the Member States see Report from the Commission to the European Parliament and the Council of 29 March 2019 on the implementation of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents (COM(2019)161 final).

<sup>9</sup> See Chapter III of Directive 2003/109/EC (Arts. 14-23).

<sup>10</sup> Communication from the Commission of 13 November 2018 on Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan (COM(2018)880 final).

The Commission invites Member States to consider further measures to guarantee the legality of the continued stay of all UK nationals lawfully residing in the territory of the EU27 Member States on withdrawal date (especially for those resident in a Member State for less than 5 years) when the temporary contingency measures come to an end. Where permanent status was not granted upfront, this end point varies, depending on the approach chosen by the Member State concerned, from several months to several years after the withdrawal.

## **2.2. Rights of UK nationals coming to the EU after withdrawal date**

For **short stays** (up to 90 days in 180 day-period), the European Parliament and the Council have agreed on a regulation exempting UK nationals<sup>11</sup> from a visa requirement conditional on reciprocity for EU citizens from the UK<sup>12</sup>.

UK nationals who arrive in the EU after the withdrawal date for **stays of longer duration** (more than 90 days for any purpose) will be subject to the EU and national legal migration rules applicable to third-country nationals<sup>13</sup>. These rules allow in particular for an authorisation, subject to the relevant criteria, to stay to work<sup>14</sup>, study, do research, or join a family member in the EU.

## **2.3. Continued right to reside for EU citizens already residing in United Kingdom**

The Commission sets as a priority the protection of the legal status of EU citizens already residing in the United Kingdom, even though this will become a matter of UK national competence, just as it seeks to secure the status of UK nationals already lawfully residing in the EU. The Commission has therefore welcomed the UK's reassurances and policy measures taken which will ensure that, even in a no deal scenario<sup>15</sup>, the rights of EU citizens in the United Kingdom will be protected through the so-called EU Settled Status<sup>16</sup>.

The Commission's Representation Offices in the United Kingdom and relevant services in Brussels closely monitor and analyse the preparatory steps taken by the United Kingdom to turn the policy announcements into legislative acts and concrete actions, to ascertain that the status of the EU citizens will be adequately secured. The Commission invites the Member State diplomatic representations in the United Kingdom to continue

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<sup>11</sup> Note that British nationals who did not enjoy free movement rights under EU law were already exempted from a visa requirement.

<sup>12</sup> Amendment to Regulation (EU) 2018/1806 of the European Parliament and of the Council of 14 November 2018 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement. The formal adoption will take place in the coming days.

<sup>13</sup> EU Immigration Portal: <https://ec.europa.eu/immigration/>

<sup>14</sup> Various forms of work migration are possible for which each time different rules are applicable.

<sup>15</sup> Policy paper on citizens' rights in the event of a no deal Brexit (Published 6 December 2018; last updated 28 March 2019), see <https://www.gov.uk/government/publications/policy-paper-on-citizens-rights-in-the-event-of-a-no-deal-brex>; Policy paper on Immigration from 12 April 2019 if there is no deal (Published 28 January 2019), see <https://www.gov.uk/government/publications/eu-immigration-after-free-movement-ends-if-theres-no-deal/immigration-from-30-march-2019-if-there-is-no-deal>

<sup>16</sup> <https://www.gov.uk/eusettledstatus>

to coordinate with the Commission Representation in the United Kingdom to provide information, expertise and legal advice to EU citizens in the United Kingdom, as appropriate<sup>17</sup>.

### 3. CITIZENS' SOCIAL SECURITY ENTITLEMENTS

In a no-deal scenario, Union rules on social security coordination will no longer apply to and in the United Kingdom. Without any contingency measures, the social security entitlements of EU27 citizens as well as UK nationals which involved the United Kingdom and are based on facts and events that occurred, and periods of insurance, employment, self-employment or residence that were completed, before the withdrawal date, would be at risk.

Contingency measures have been taken both at Union and national level.

#### 3.1. Contingency Regulation on Social Security Coordination

On 25 March 2019, the Regulation of the European Parliament and of the Council establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom from the Union was adopted<sup>18</sup>.

This contingency Regulation, which is unilateral, binding in its entirety and directly applicable in all Member States, will apply from the date of a disorderly withdrawal. It covers the following persons:

- nationals of a Member State, stateless persons and refugees who are or have been subject to the legislation of one or more Member States and who are or have been in a situation involving the United Kingdom before the withdrawal, as well as members of their families and survivors;
- nationals of the United Kingdom who are or have been subject to the legislation of one or more Member States before the withdrawal, as well as members of their families and survivors.

Under the Regulation, Member States will continue to apply:

- the principle of aggregation as regards periods of insurance, employment, self-employment or residence in the United Kingdom that were completed before withdrawal;
- the principle of assimilation as regards benefits or income acquired and facts or events that have occurred in the United Kingdom before the withdrawal; and
- the principle of equality of treatment as regards any situation that has occurred before withdrawal.

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<sup>17</sup> See [www.eurights.uk](http://www.eurights.uk)

<sup>18</sup> Regulation (EU) 2019/500 of the European Parliament and of the Council of 25 March 2019 establishing contingency measures in the field of social security coordination following the withdrawal of the United Kingdom from the Union, OJ L 851 , 27.3.2019, p. 35.

The Regulation does not cover facts and periods that occur after the withdrawal, nor does it cover the principle of exportability of cash benefits to the United Kingdom.

### **3.2. The unilateral coordinated contingency approach**

All EU27 Member States have been invited<sup>19</sup> to apply after the withdrawal a unilateral coordinated contingency approach that would complement the Regulation in ensuring the widest possible protection for persons affected by the withdrawal.

Similarly to the Regulation, the coordinated approach would apply to all insured persons with entitlements in the EU27 Member States and involving the United Kingdom before the withdrawal date, and to whom the relevant Regulations on coordination of social security systems would have applied, had it not been for the withdrawal.

This would cover EU27 citizens and UK nationals, who, as a result of exercising their right to free movement before the withdrawal date, acquired or will acquire entitlements in the EU in respect of periods completed or facts or events occurred prior to the withdrawal date<sup>20</sup>. The coordinated approach goes beyond the Regulation in its scope by also covering:

- export of old-age pensions to persons residing in the United Kingdom;
- reimbursements of healthcare costs or of costs related to unemployment benefits for frontier workers that are ongoing at the time of withdrawal;
- reimbursement requests dealt with by an EU27 Member State involving the United Kingdom that are made after withdrawal but relating to a treatment before the withdrawal;
- planned and necessary medical treatment in the United Kingdom that is ongoing on the withdrawal date;
- reimbursement requests after withdrawal for unemployment benefits provided by the United Kingdom before withdrawal to frontier workers residing in the United Kingdom but working in an EU27 Member State.

### **3.3. National, unilateral measures that can go further**

In some areas, individual Member States could complement the coordinated contingency approach through their own, national, unilateral measures that provide for further

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<sup>19</sup> See draft Guidance note of the Commission services: BREXIT contingency joint approach at EU-27 level in a no-deal scenario ('unilateral coordinated contingency approach') discussed at the technical expert seminar on 20 December 2018.

<sup>20</sup> The approach also applies to stateless persons and refugees in an analogous situation, as well as to family members and survivors of these categories of persons.

The approach also extends the application to third-country nationals who are or have been subject to Regulation (EU) No 1231/2010 or Regulation (EC) No 859/2003 prior to the withdrawal date, and their family members and survivors in respect of their entitlement acquired or to be acquired relating to situations involving the United Kingdom prior to withdrawal. This means that third country nationals who were, prior to the withdrawal date, in an intra EU cross-border situation involving the United Kingdom, as well as their family members and survivors, would maintain their entitlements in the EU27 Member States in respect of periods completed, or facts or events occurred prior to the withdrawal date. Regulation (EU) 1231/2010 does not apply to Denmark.

protection for citizens<sup>21</sup>. EU27 Member States could do so by continuing the export to the United Kingdom of cash benefits other than old-age pensions, such as unemployment benefits, maternity/paternity benefits, invalidity pensions, sickness benefits, survivors' pensions, pensions in respect of accidents at work and death grants.

### **3.4. Bridging the gap between withdrawal and the steady-state**

The no-deal scenario, in contrast to a situation with a ratified Withdrawal Agreement, will inevitably leave a period of time after withdrawal, a 'gap' during which periods of work, residence or insurance in the UK by citizens are not covered by the Union-wide contingency measures. The Commission considers that the impact on citizens of this 'gap' has to be minimised.

EU27 Member States are taking measures with regard to the situation of citizens after a no-deal withdrawal. These measures, which may go beyond the Union-wide contingency measure, should be unilateral and time-limited.

EU27 Member States could consider, *inter alia*, to ensure the continued application of the principle of aggregation also to these persons' post-withdrawal periods of work, insurance and residence in the United Kingdom. Furthermore, EU27 Member States could also allow access to healthcare to UK nationals who are UK-insured but reside on their territory, under the condition of reciprocity.

## **4. ADDITIONAL INFORMATION**

Public authorities and stakeholders can find further information on the impact of the United Kingdom's disorderly withdrawal on citizens' residence and social security entitlements on the following website of the Commission:

[https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notice\\_en](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notice_en)

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<sup>21</sup> As set out in the draft Guidance note (see footnote 19).