

To: Maroš Šefčovič, Vice-President of the European Commission  
Philippe Bertrand, EU Commission Task Force for Relations with the UK

Dear Mr Šefčovič and Mr Bertrand,

### **Citizens' Rights Part of the Withdrawal Agreement Implementation**

We write further to your kind invitation to another meeting with ourselves and British in Europe. We would be grateful to have this meeting as soon as possible. We appreciate your continued work, in particular the comments made by Mr Šefčovič following the Joint Committee meeting on 28 September 2020.

There are three areas of notable concern:

1. The UK's regulations governing rights of EU citizens during the grace period
2. The rights of citizens who are considered to have reasonable grounds for a late application to the EU Settlement Scheme
3. Transparency around the EU Settlement Scheme, in particular, the continued delayed publication of the scheme's Policy Equality Statement

#### **1. Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020**

We have concerns about the UK's regulations governing rights of EU citizens during the grace period and beyond. The Citizens' Rights (Application Deadline and Temporary Protection) (EU Exit) Regulations 2020 ('the Regulations')<sup>1</sup> were given in draft form to Members of Parliament on 7 September. We have doubts that these regulations are compliant with the UK's obligations under Article 18 of the Withdrawal Agreement.

The Regulations, intended to take effect from 1 January 2021, exclude a large cohort of people from having a legal basis to live in the UK during the grace period and whilst their application is pending. The Regulations limit a legal basis to live in the UK to those who were 'exercising treaty rights' following the existing Immigration (European Economic Area) Regulations 2016 ('the EEA regulations') by the end of the transition period.

There will be people who are eligible for status via the EU Settlement Scheme ('EUSS') who will not have a legal basis to live in the UK during the grace period.

Anyone who has applied to the EUSS before the end of the grace period and is pending a decision after the grace period ends, will have to demonstrate they fall within the scope of the draft regulations to have the benefit of its protection.

This position was confirmed by a minister in the House of Lords on 30 September 2020 during the Report stage of Immigration and Social Security Co-ordination (EU Withdrawal) Bill 2019-21 ('the immigration bill'), where it was stated<sup>2</sup>:

*"Noble Lords asked me about the scope of the regulations. People need to exercise free movement rights to benefit from the savings in the grace period SI. We are not inventing rights*

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<sup>1</sup> <https://www.legislation.gov.uk/ukdsi/2020/9780348212204/contents>

<sup>2</sup> <https://bit.ly/2GhOO0N>

*of residence to save them, because that is not what the withdrawal agreement says. The statutory instrument will be subject to debate and approval by Parliament and will need to come into force at the end of the transition period. Where relevant, Home Office guidance will be updated to reflect the statutory instrument before the grace period commences.”*

We understand that under Article 18(2), without prejudice to the restrictions set out in Article 20 of the Agreement, no restrictive measures can be applied by the authorities of the UK until the end of the grace period. The regulations place restrictions on people who do not fall within the scope of the EEA regulations. These restrictions extend beyond the scope of Article 20.

We understand that all rights should be conferred on an applicant whilst their application is pending with the EUSS. The effect of the regulations is to limit rights to only those who fall within the EEA regulations. This appears contrary to article 18(3).

We would be grateful if you would consider whether the regulations comply with the UK’s commitments under Article 18 of the Withdrawal Agreement - in particular articles 18(2) and (3).

We are surprised by these restrictions. The UK Government has repeatedly committed to ensuring that all those eligible for status via the EUSS would be protected during the grace period and whilst applications were pending. The Minister for Immigration Kevin Foster had previously confirmed on 16 June 2020 during the committee stage of the immigration bill that<sup>3</sup>:

*“The Government have been clear that status granted under the scheme will allow individuals to continue with their lives here as they do now, with the right to work, study and access benefits and services, including healthcare, as now, as well as the other entitlements listed in the new clause. **We have also been clear that the rights of those eligible to apply under the EU settlement scheme are protected during the grace period, pending the outcome of an application to the scheme by 30 June 2021.***

*As we touched on, section 7 of the European Union (Withdrawal Agreement) Act provides powers to make regulations to provide temporary protection for this cohort during the grace period. That means that if someone has not applied under the EU settlement scheme by the end of the transition period, they will be able to continue to work and live their lives in the UK as they do now, provided that they apply by 30 June 2021 and are then granted status. The Government are currently developing those regulations, which will be debated and made in good time prior to the entry into force at the end of the transition period.”*

Furthermore, the explanatory notes<sup>4</sup> of the EU (Withdrawal Agreement) Act 2020 set out that section 7 (the section that the Regulations have been created via) would be used to ensure legal rights for a ‘protected cohort’. The protected cohort was defined to include **all** those eligible for status via the EUSS.

We would welcome these points being discussed during the next meeting of the specialist committee on citizens’ rights.

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<sup>3</sup> <https://bit.ly/2ZgoNo8>

<sup>4</sup> Paragraphs 129 - 137 with reference to paragraph 40 <https://publications.parliament.uk/pa/bills/lbill/58-01/016/5801016en.pdf>

## 2. The rights of citizens who considered to have reasonable grounds for a late application to the EU Settlement Scheme

Article 18(1)(d) allows “those persons to submit an application within a reasonable further period of time if there are reasonable grounds for the failure to respect the deadline”.

Although the UK Government has not yet published its guidance on what constitutes ‘reasonable grounds’, it has confirmed that a citizen, whose late application is accepted, will only have legal status from the point in time that the status is granted. Therefore such a person will have been without lawful status in the interim period between the end of the grace period (1 July 2021) and the eventual grant of status.

This was confirmed by the minister in the House of Lords on 30 September 2020 where she said<sup>5</sup>:

*“A person with reasonable grounds for missing the deadline, who subsequently applies for and obtains status under the scheme, will enjoy the same rights from the time they are granted status as someone who applied to the scheme before the deadline. However, **they will not have those rights in the period after the missed deadline and before they are granted status**, which is why we are encouraging and supporting people to apply as soon as possible. It is very pleasing that over 3.9 million people have done so.”*

This lack of lawful status can have serious consequences for the individual - for example they can become liable to unexpected, potentially very large NHS healthcare bills, they can lose their job or their house - in short the type of practical consequences faced by victims of the Windrush scandal.

We would like to ask you to consider whether this is in the spirit of WA Article 18(1)(d), or whether the intention is that someone who is considered to have reasonable grounds to apply late should be granted lawful status which **includes** the period between the end of the grace period and the grant of status.

## 3. Transparency, Reporting and the Policy Equality Statement

Finally, there are some issues on how the Home Office reports on the EUSS scheme. A freedom of information request has been made previously requesting disclosure of the numbers of applications / decisions from women and men<sup>6</sup>. The Home Office refused the request, concluding that “*Due to gender not being mandatory field on EU Settlement Scheme Applications, breaking statistics down into gender categories would require us to require us to either manually search individual records or alternatively contact applicants for further information. This would be neither cost nor resource effective.*”. However, the second ICIBI inspection of the EU Settlement Scheme, published on 20 February 2020<sup>7</sup> confirmed that this information is indeed available<sup>8</sup>. Indeed, gender is read by the ‘EU Exit: ID Document Check’ App for applications where the citizens’ identity document is scanned by the app, and it is requested on paper applications where the citizens’ identity document cannot be scanned by the app.

We also have increasing concerns about the UK continuing to delay the publication of its Policy Equality Statement in relation to the EUSS. This should contain vital information relating to those groups that the scheme will find

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<sup>5</sup> <https://bit.ly/2GhOOON>

<sup>6</sup> [https://www.whatdotheyknow.com/request/eu\\_settlement\\_scheme\\_gender#incoming-1450429](https://www.whatdotheyknow.com/request/eu_settlement_scheme_gender#incoming-1450429)

<sup>7</sup> <https://www.gov.uk/government/publications/an-inspection-of-the-eu-settlement-scheme-april-2019-to-august-2019>

<sup>8</sup> See Figure 9 page 32 of

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/868259/ICIBI\\_Inspection\\_of\\_the\\_EU\\_Settlement\\_Scheme\\_Apr\\_2019\\_to\\_Aug\\_2019\\_.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/868259/ICIBI_Inspection_of_the_EU_Settlement_Scheme_Apr_2019_to_Aug_2019_.pdf)

difficult to reach. Organisations, lawyers and groups supporting people with applications to the EUSS need this information to understand best who they should focus on to support.

The ICIBI, in its second inspection of the EU Settlement Scheme<sup>9</sup>, made 9 recommendations. The third of these stated: *“In the interests of promoting the EU Settlement Scheme (EUSS) and being recognised as its “authoritative voice”, publish the department’s Policy Equality Statement (PES) for the EUSS or such parts of the PES that provide reassurance that the impacts of the EUSS have been fully considered, in particular for vulnerable and hard-to-reach individuals and groups.”*

In its response to the ICIBI’s report, the Home Office on 27 February 2020 accepted this recommendation and committed to publishing the PES ‘by spring 2020’.<sup>10</sup>

The PES has still not been published, and subsequent parliamentary questions have been met with the reply (in July 2020<sup>11</sup> and September 2020<sup>12</sup>) *‘The Policy Equality Statement for the EU Settlement Scheme will be published shortly.’* On 14 September, this was raised again in the House of Lords<sup>13</sup>, and the minister speaking for the Government replied<sup>14</sup>: *“Finally, on the policy equality statement that the noble Lord, Lord Oates, asked about—I think the noble Baroness, Lady Lister, mentioned it as well—I am very sorry to say that I cannot add to other Ministers’ comments. The statement will be published shortly as outlined by them.”*

The continued delay of this report and the missing information relating to the EUSS is concerning and exacerbates the risk of people not applying to the scheme in time.

Please do raise these continued concerns and establish firm commitments when this information will be disclosed.

We look forward to hearing from you and proposed dates for a future meeting.

Kind regards,

Luke Piper

Head of Policy, **the3million**

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<sup>9</sup> Paragraph 4.3 <https://www.gov.uk/government/publications/an-inspection-of-the-eu-settlement-scheme-april-2019-to-august-2019>

<sup>10</sup> Paragraph 3.2 of <https://www.gov.uk/government/publications/response-to-an-inspection-of-the-eu-settlement-scheme-april-to-august-2019/the-home-office-response-to-the-icibi-report-an-inspection-of-the-eu-settlement-scheme>

<sup>11</sup> <https://questions-statements.parliament.uk/written-questions/detail/2020-07-20/76759>

<sup>12</sup> <https://questions-statements.parliament.uk/written-questions/detail/2020-07-22/78787>

<sup>13</sup> <https://bit.ly/3kmRuIP>

<sup>14</sup> <https://bit.ly/3bWhIPC>