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His Excellency Mr Donald Tusk
President of the European Council
Rue de la Loi 175
B-1048 Brussels

by email:
ec.president@consilium.europa.eu

21 March 2018

Dear President Tusk,

We write jointly as *British in Europe*, representing a membership of over 30,000 British citizens living, working and studying in the EU27 countries, and *the3million*, representing the three million or more EU nationals living in the UK, with almost 40 000 registered members. Our two groups account for around a quarter of the total number of people in the EU who have seized the opportunity to exercise their free movement rights. For the last year, we have been working with your citizens' rights Brexit team, as well as the team in the Article 50 task force and the European parliament hoping to maintain and secure our EU citizens' rights.

On Monday, the Commission published its third draft legal text for the Withdrawal Agreement and announced that it and the UK had reached "complete agreement" on citizens' rights.

In your letter of 20 March to the members of the European Council ahead of their meeting on 22-23 March you write:

To me, one thing is clear. We have achieved success when it comes to citizens' rights... As I have stated from the very beginning of these negotiations, defending the rights of our citizens will be the number one priority for the EU. And we have made it. European citizens will be fully protected from the consequences of Brexit. This also means that our citizens crossing the Channel in this period will not get worse treatment than those who did so before. This is good news for all Europeans.

This is simply not the case.

If this were an ordinary negotiation, about goods and services rather than people, you might be justified in feeling that you have achieved a good compromise. But this is no ordinary negotiation; it is a matter of fundamental justice.

As British in Europe, under the terms of draft Withdrawal Agreement:

- we are losing our continued free movement rights beyond our host member state and member state of work where relevant.
- We are losing recognition of our professional qualifications beyond our host member state and member state of work where relevant.
- We are losing the right to return to the UK with non-UK spouses under the much more favourable EU law regime and;
- We are losing the right to provide cross-border services as self-employed people.

Thousands of UK nationals living in the EU27 will be deprived of their right to earn a living legally at the end of the transition period (or next March if the transition does not go ahead). EU economies will be deprived of tax and social security contributions from a population that is 80% working age or younger and this will take its toll on families.

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As the3million, we also find that your above statement does not reflect the reality on the ground.

- At the cut-off date, our rights will ‘fall away’ and we will have to apply for a less protective status within one of the harshest, most hostile and punitive immigration systems in Europe.
- The procedural guarantees offered by the Withdrawal Agreement regarding the registration system are insufficient, leaving the UK still the possibility to implement a system similar to its current Permanent Residence registration system, which has a non-success rate of 30%, by problematic implementation of requirements of comprehensive sickness insurance and means testing.
- Many of us will fall foul of this system through high Home Office error rates, which we will have to navigate without legal aid or even access to our data to defend ourselves given the Government’s Bill to deprive immigrants of data protection rights. Some will be at risk from losing their home and life in the UK.
- Even if we obtain permanent residence, that status has become far less secure than our current one, as we will not have a life-long right to return, and the UK has total freedom to define the grounds for deportation on the basis of criminality for future conduct.

Furthermore, the system of enforcement for the implementation of the Withdrawal Agreement in the UK remains particularly weak. With the involvement of the CJEU limited over time, and potential reluctance of UK courts to implement direct effect and use preliminary rulings, much depends on the creation of an Independent Authority to monitor implementation. However, the draft Withdrawal Agreement does not provide any guarantee this Authority will be independent and have the resources to ensure proper monitoring and enforcement, which will only be possible if it is set up as a EU-UK body, directly by the WA, and its role will not be limited in time. This makes for a bleak, uncertain future.

Together, we have been the poster children for EU free movement.

We have moved across the Channel. We have built lives, businesses and multinational families together. We have made dry legal concepts in the TFEU a reality and helped make the EU project what it is today.

The cost of doing so has sometimes been high: many of us who are UK nationals have been deprived of another basic citizenship right: the right to vote in the UK: Over 60% of us were not able to cast a ballot in the EU referendum, and we now face being unable to return to the UK if we have non-British spouses. The Council has not defended the rights of its citizens, be they British or from the other EU27 countries. You and the UK have negotiated away some of the most fundamental rights of over 4 million committed Europeans and at the end of the transition we will find ourselves in a far poorer position than when we started our joint campaign on citizens’ rights in March 2017.

But we have another year to go. The Council and its member states can still choose not to penalise four million EU citizens who have done no more than exercise their free movement rights and build a better EU. Before you and the European Council sign off on this whole scale withdrawal of our citizens’ rights, please reflect on the message that it sends to the rest of the continent and on whether you want to build the post-Brexit European Union on the ashes of our rights.

Yours sincerely,

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