

Brussels, 29 December 2017

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**Subject:** complaint against the European Commission for failing to answer questions relating to the threat to UK citizens of losing Union citizenship post-Brexit.

Dear Mrs. O'Reilly,

I should like to begin by supporting fully your initiative to ensure information for the public on the forthcoming negotiations aimed at reaching agreement on the United Kingdom's withdrawal from the EU. In your letter of 28 February 2017 to President Juncker the first of your proposals appears to have been accepted in that the negotiating positions of the EU Commission task force on Article 50 are published on its dedicated website as are those of the UK. There are also documents outlining the areas of agreement between the two sides, for example the document published of 8 December 2017 on citizens' rights. From the outside it is difficult to judge the degree of transparency, since as you accept in your letter, certain documents and exchanges may remain confidential during the negotiations. Thanks to of your initiative there is more transparency surrounding BREXIT than might otherwise be the case.

There has yet however to be any full response from either side to the second of your proposals which relates to "questions, complaints and concerns about citizens' rights and obligations arising from the fact that they have exercised their right to free movement". Indeed, New Europeans among others has pointed out that some 3 million EU citizens in the UK and 1.5 UK citizens in the EU have been waiting nearly 18 months for answers. The impact on their professional and personal lives has been such as may constitute a violation of Article 8 of the European Convention on human rights- the right to a private and family life. Whilst it is not in the power of the European ombudsman to provide answers, the earlier initiative can be followed up by pressing once more for the need for both sides either to provide joint answers or for each to give a unilateral guarantee that existing rights will be fully preserved and enforced.

In your letter of 28 February you point out that "the European ombudsman was established in the Maastricht Treaty alongside the creation of EU citizenship." It follows that the status of Union citizenship is a particular concern of the European ombudsman and it is therefore logical to appeal to you when this status is in jeopardy.

It was on the initiative of the European ombudsman that the right to good administration was included in the citizenship chapter of the Charter of fundamental rights under Article 41 which provides for an "obligation on the part of the administration to give reasons for its decisions". I have attempted by all means possible to obtain answers to the question of what happens to EU citizenship post-Brexit in correspondence with the Belgian and British governments as well as with the chief negotiators of the European Commission and European Parliament. A file of this correspondence is included here. This shows that the EU institutions are refusing to provide any answers or explain why they clearly believe without stating it openly that Union citizenship is lost for nationals of a country withdrawing from the EU. The most recent letter I have received from the Article 50 task force simply states that "in addition to the legal constraints of Article 20 TFEU, the Chief Negotiator has no mandate to negotiate EU citizenship for UK nationals". In order to preserve my right to preserve this status as one which should be based on residence and attachment to European values as much as on nationality, I have no alternative but to turn to the European ombudsman.

I requested the EU negotiators to take into account the fact that whilst there is a *prima facie* case for the automatic loss of Union citizenship for 67 million people at a stroke, there were at least six reasons why this convenient solution was open to challenge. Since the EU Commission did not see fit to take up any of these arguments, I submit them to you:

**(i) There are individuals, like myself, who have built their lives on Union citizenship.**

In my own case, this can be illustrated by the fact that following studies in the UK, I began first by working for the Council of Europe before joining the Secretariat of the Council of Ministers once the UK joined the EU. Following that I left the European Civil Service and ran BEUC (European Bureau of Consumer Unions), before founding ECAS (European Citizen Action Service) and more recently ECIT (European Citizens' Rights, Involvement and Trust), a foundation on European citizenship. My personal, professional and even intellectual life is closely linked to Union citizenship. I am not willing to give up this status cooperatively as a result of a referendum in which this risk was not mentioned and in which I had no right to vote.

**(ii) The Treaties explain how Union citizenship is acquired, but do not lay down provisions for its loss.**

If, in the majority of cases, a citizenship status is acquired by birth, its loss is never automatic, but a highly contentious political and legal issue. Precedent suggests that where state sovereignty over a territory changes, the basic human right to family and private life should be respected, allowing citizenship to be preserved. The EU is a Union of states and citizens so that what happens at the level of states and governments is not necessarily the same as at the level of people. In international law loss of citizenship is outlawed. Since policy makers did not consider that Article 50 on the withdrawal of a member state would be triggered, they did not make provision for the consequences for Union citizenship. Any such provision would have to respect the EU's own standards, citizenship being one of the chapters in the Charter of Fundamental Rights and those under public international law.

**(iii) Those most directly affected by the impact on Union citizenship had no right to vote in the referendum.**

The absence of the issue from the referendum should be seen together with the fact that many of those most likely to raise it had no right to vote. Since I have been resident outside the UK for over 15 years, this was my own case, but it was also that of the vast majority of EU citizens resident in the UK. Whilst it was for the UK government and Parliament to establish the rules for the referendum, the disenfranchisement of the majority of 3 million EU citizens in the UK and a proportion of the 1.5 million

UK citizens living in the EU surely adds weight to the argument that deprivation of EU citizenship should not occur as an automatic result of the referendum, but requires further consideration.

**(iv) Union citizenship exists in addition to national citizenship and is a “fundamental status”, a transnational citizenship**

The arguments so far developed could only be dismissed if Union citizenship itself could be regarded as a purely symbolic badge of membership of the EU and devoid of real substance. But this is not so. In a series of landmark cases, the Court of Justice of the EU has described Union citizenship as a “fundamental status” which can be invoked in a court and which Member States are obliged to take into account when they take decisions on nationality. Insufficient attention has been given to the case-law of the Court. Certainly, Union citizenship is no post-national citizenship in its own right, but does have features which make it the first transnational citizenship of the modern era. These features are shaped variously by decisions of one’s country of origin, country of residence and the EU. Responsibility for its loss cannot lie solely with one’s country of origin. Nor can Union citizenship be equated solely with rights or its loss compensated for by preserving the rights attached to it, since it is also about the wider aspects of participation and belonging. Article 20 of the Treaty on the Functioning of the EU (TFEU) does not attach Union citizenship to any particular policy, whilst Article 25 (TFEU) provides possibilities to introduce reforms. The fundamental and evolving nature of this transnational citizenship make this a status far easier to give than to take away.

**(v) Keeping the status of Union citizenship is the most practical course of action to solve the problems for people when a member state withdraws from the EU.**

On 21 January 2017 at a hearing of petitioners, it was explained that the European Parliament was considering the option of how to safeguard rights decoupled from European citizenship, or how to keep this status. As someone who has helped run advice services for 20 years, I do not think decoupling rights from the status of Union citizenship is a realistic opinion, because it is the status which gives the citizen the benefit of the doubt. The numbers, over 4 million in all, amount to one third of all EU citizens resident in other Member States. This makes it virtually impossible to find workable solutions. Without recognition of the status of EU citizenship by the EU and the UK, the transition to a new regime can only occur at unacceptable cost to citizens and the administration alike over at least a generation. The range of foreseeable and unforeseeable situations, beyond those already identified, is bound to require disproportionate efforts by comparison with preserving Union citizenship as the better and certainly the most practical option.

**(vi) Union citizenship was absent from the UK referendum on membership of the EU.**

It is difficult to agree with the assertion that Union citizenship was lost by the outcome of the UK referendum of June 2016 on membership of the EU. It was entirely absent from the campaign and official information provided. It can be argued that many consequences for regulation, trade or the economy in general were not mentioned, but this argument is not valid for something as basic as citizenship. Union citizenship could have been mentioned but was not in the document sent by the UK government to every household, even though the rights attached to this status were. In the rules set by the Electoral Commission and its information about the referendum, there was no mention of Union citizenship, which was not raised either by the officially recognised campaigns to leave or to remain in the EU. An explanation for this omission from any political discourse can be found in the glossary attached to the

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UK Working Paper on citizens' rights of 26 June 2017 where it is explained in relation to "EU citizen" that "Persons who are EU citizens solely by way of their British nationality are excluded from the scope of this term."

If each of these arguments considered separately might appear insufficient to change the obvious conclusion that EU citizenship is lost on withdrawal from the EU, taken together they make a strong case. Considering this case has the advantage of opening up a debate on the future of Union citizenship which ever since it was included in the Maastricht Treaty, many would like to see becoming more inclusive and open to longstanding residents in the EU and citizens of neighbouring countries in Europe, provided those countries recognise the status

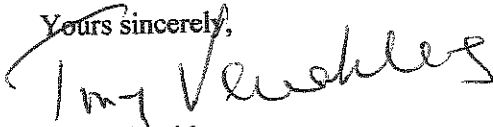
I request you to draw the Commission's attention to the need to provide reasons for its position or lack of one. Even if in the eyes of the administration a failure to answer questions may be regarded as legally correct, if there are doubts and concerns in the minds of citizens like myself, there is a duty according to the principle of good administration to do so nevertheless. Otherwise never before will so many million people have been stripped without due process of a citizenship status. This would amount to the most serious breach of the principle of good administration in the history of the EU.

I urge you to ask the Commission:

- to provide a full legal explanation of the impact of a State withdrawing from the EU on Union citizenship, since this is an unprecedented situation giving rise to numerous questions and debates which have to be answered;
- to consider the three options theoretically available, beginning with the loss of EU citizenship and at what stage, whether some kind of status such as associate citizenship as floated in the European Parliament could be introduced, or full retention of Union citizenship, requiring in the last resort a Treaty change.

I am more than willing to provide your services with further information and look forward to your response.

Yours sincerely,



Tony Venables