

We would like to ask for clarification of the personal scope of Part Two, Title II of the Withdrawal Agreement (Citizens' Rights) and its particular application in the UK.

To assist, we will frame our enquiry by considering two hypothetical EU citizens:

Citizen **A** who:

- has been living in the UK continuously for the last 10 years
- has been working for all that time
- has been granted 'settled status' under the UK's EU Settlement Scheme

Citizen **B** who:

- has been living in the UK (married to a British citizen) continuously for the last 10 years
- was not economically active during any of that time
- has not required any social assistance from the UK
- was not covered by Comprehensive Sickness Insurance (CSI) during any of that time
- had free access to the UK's National Health Service (NHS) in all that time
- has been granted 'settled status' under the UK's EU Settlement Scheme

We note that in November 2018, the European Commission created a [Questions and Answers](#) document about "*the rights of EU and UK citizens, as outlined in the Withdrawal Agreement*".

In that document, pages 4-6 of the Personal Scope section explains that the substantive conditions of residence are the same as those under current EU law, and emphasises that there shall be "*no discretion*".

Since **A** fulfils these conditions, **A** is protected by the Withdrawal Agreement. However, since **B** was self-sufficient without CSI, the document states that **B** will have "**no legal entitlement to stay in the UK under the Withdrawal Agreement** and their situation will depend on whether the UK authorities decide to treat them more favourably than required by the Withdrawal Agreement".

As is now well known, the UK authorities have indeed treated citizens like **B** more favourably than required by the Withdrawal Agreement, and both **A** and **B** have been granted 'settled status' under the [EU Settlement Scheme](#).

Our central question in this letter is: Can you confirm whether **B** can derive any rights directly from the Withdrawal Agreement?

If it is the case that **B** *cannot* derive any rights directly from the Withdrawal Agreement, would you be able to comment on the following points:

1. Article 18(1) contains (our emphasis) "*to apply for a new residence status which **confers the rights under this Title** and a document evidencing such status which may be in a digital form.*"

Both **A** and **B** have applied for and been granted the same residence status ('settled status' under the EU Settlement Scheme). You will be aware that the UK prescribes digital documents with identical wording. Both **A** and **B** can access their status online which, amongst others, states "Legal basis of status. This leave is issued in accordance with the EU exit separation agreements. For EU citizens, and the family members of EU citizens or of UK citizens, this is the Withdrawal Agreement."

How can a distinction be made that 'rights under this Title' are conferred to **A**, but not to **B**?

2. Article 18(1)(a) states that “*the purpose of the application procedure shall be to verify whether the applicant is entitled to the residence rights set out in this Title.*”

How can B using the same application procedure as A not be directly entitled to the residence rights set out in this Title?

This is not an issue as to who is or is not in scope of the Withdrawal Agreement and nor is it an academic one. The UK is already attempting to distinguish, under EU Law, between two categories of citizens with pre-settled status (those who exercised treaty rights and those who did not) in terms of access to social assistance. There is an [ongoing Judicial Review](#) on this matter.

Furthermore, the UK has passed [secondary legislation](#) which removes the rights of freedom of establishment and free movement of services, and protection from discrimination on the grounds of nationality. A would be excluded from this legislation by virtue of the Withdrawal Agreement Article 24, however if B has no rights under the Withdrawal Agreement, B is not excluded from this legislation.

3. Article 18(1)(e) states that “*the host State shall ensure that any administrative procedures for applications are smooth, transparent and simple, and that any unnecessary administrative burdens are avoided*”.

If, whenever citizens with settled or pre-settled status wish to demonstrate their rights under the Withdrawal Agreement, it would appear to be the case that they will have to repeatedly go through an additional administrative burden of proving their rights by demonstrating they historically exercised treaty rights, how can this comply with Article 18(1)(e)?

4. Does the Commission have any view on the relevance of [Case C-456/02 Trojani](#) to the question of whether B should fall within the personal scope of Part Two Title II of the Withdrawal Agreement, with particular reference to the second ruling (our emphasis) “*However, once it is ascertained that a person in a situation such as that of the claimant in the main proceedings is in possession of a residence permit, he may rely on Article 12 EC ..*”?
5. We recognise that there are other circumstances in which an EU citizen resident in the UK would not be exercising treaty rights. However in our particular given example, would the Commission recognise that the only reason B is not deemed to be exercising treaty rights is due to not having Comprehensive Sickness Insurance? And that furthermore the Commission launched infringement proceedings against the UK in 2012, stating that not recognising entitlement to treatment by the UK public healthcare scheme (NHS) as fulfilling the CSI requirement is [in breach of EU law](#)? A subsequent [parliamentary question](#) was raised on this matter in 2017.
6. Finally, what can be the rationale and philosophy behind the EU now preventing one of their citizens from being protected by an internationally negotiated UK-EU Treaty, when the UK is wishing to be more generous to such an EU citizen and thereby making up for both its past lack of administrative efforts to register and inform EU citizens and its breach of EU law in not accepting that access to the NHS fulfils the CSI requirement?