



EUROPEAN COMMISSION

Task Force for the Preparation and Conduct of the Negotiations with the United Kingdom under Article 50 of the TEU

The Chief Negotiator

Brussels, **25 MARS 2019**
tf50(2019)1780723

Dear Secretary of State, *Dear Steve,*

Thank you for your letter of 4 March.

Safeguarding the rights of the citizens affected by the United Kingdom's withdrawal from the Union has been from day one a top priority for the Union in its negotiations for an agreement on your country's orderly withdrawal. These negotiations were concluded in November last year.

I have steadily said, and continue to believe, that the best way to safeguard the rights of the citizens affected by the United Kingdom's withdrawal is to have the Withdrawal Agreement ratified so that it can enter into force.

Since November 2018, the Union is deploying every effort to ensure the entry into force of the Withdrawal Agreement. The Council has already adopted on 11 January 2019 the decision authorizing the signing of the Withdrawal Agreement¹ and has submitted to the European Parliament the draft decision on the conclusion of the Withdrawal Agreement for its consent.

I am certainly aware of the proposal put forward by Mr Costa, supported by the House of Commons on 27 February, to which you refer in your letter. Mr Costa kindly sent me a copy of the letter that he addressed to President Donald Tusk on this matter. However, I have difficulties understanding how the amendment proposed by Mr Costa can be reconciled with the vote of the House of Commons on 13 March to exclude an exit from the Union without a Withdrawal Agreement.

¹ Council Decision (EU) 2019/274 of 11 January 2019 on the signing, on behalf of the European Union and of the European Atomic Energy Community, of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 47I , 19.2.2019, p. 1.

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Since the shared objective of the United Kingdom and the Union is to ensure an orderly withdrawal based on a Withdrawal Agreement, as last confirmed by your Prime Minister's letter to President Donald Tusk of 20 March, let me stress once again that the text agreed in November 2018 represents a fair compromise and remains the best and only deal possible. The European Council (in Article 50 composition) stated in December 2018 that the Withdrawal Agreement is not open for renegotiation and this line was since then reconfirmed on many occasions by President Jean-Claude Juncker, as well as by President Tusk. The European Union continues to stand by that Withdrawal Agreement.

Moreover, I would like to emphasize that the provisions of the Withdrawal Agreement on the citizens' rights are part of an overall and comprehensive approach to the orderly withdrawal of the United Kingdom. Beyond the Part specifically titled "Citizens' rights", the Agreement contains other provisions also relevant to the protection of other rights of citizens. For instance, it also includes provisions on personal data protection, on the orderly completion of judicial cooperation procedures in criminal and/or civil matters and of administrative procedures affecting citizens, as well as provisions aimed at ensuring that there will be no hard border between the Republic of Ireland and Northern Ireland, to the benefit of the citizens residing there.

It is therefore far from straightforward to identify which provisions would need to be 'carved-out' as part of the ring-fencing exercise proposed by the House of Commons in February, with the risk of unequal treatment of certain categories of citizens. Moreover, for the citizens' provisions in the Withdrawal Agreement to be truly applicable in practice, it would be indispensable to rely on the basic rules and principles on the interpretation and application of the Agreement (e.g. primacy and direct effect of its provisions, consistent interpretation of such provisions with the rulings of the Court of Justice of the European Union), as well as on the rules ensuring the governance of the Agreement. I would highlight in this connection the special role of the Court of Justice of the European Union with regard to the interpretation and application of the citizens' part of the Agreement through its extended jurisdiction to give preliminary rulings at the request of United Kingdom courts well beyond the end of the transition period². It is indeed difficult to see how citizens could be able to rely on specific provisions in the absence of the whole structure guaranteeing the applicability and enforceability of the Agreement.

Finally, I would like to stress that the European Union and the remaining Member States have conducted intense work in preparation for the event that, despite our efforts, the United Kingdom would decide to leave the Union without a Withdrawal Agreement. I can assure you that even in this undesired scenario, the rights of British nationals residing in the Union would remain a priority and I am confident that all the requisite measures will be taken to regularize their situation in the immediate future and to provide them with the legal certainty they need for the longer term. No British national will be left in the dark in such situation. The Commission has published a webpage providing the latest information on the Member States' preparation regarding the right of residence of British citizens on their territory³.

² This would apply to United Kingdom cases that commenced at first instance within 8 years from the end of the transition period.

³ https://ec.europa.eu/info/brexit/brexit-preparedness/residence-rights-uk-nationals-eu-member-states_en

Our joint efforts should remain focused on making sure that the Withdrawal Agreement will be ratified and will enter into force. We should not be distracted from this essential objective.

Yours sincerely, *et de tout coeur*

A handwritten signature in blue ink, appearing to read 'M. Barnier', with a stylized flourish at the end.

Michel BARNIER