

Member of the European Parliament
European Parliament Brexit Coordinator
Group of the Alliance of Liberals and Democrats for Europe
The Chair

D 201444 03.07.2018

Rt Hon Sajid Javid MP
Secretary of State for the Home Department
Home Office
2 Marsham Street
London SW1P 4DF
United Kingdom

Dear Sajid,

It was a pleasure to meet you again on 19 June. Thank you also for your letter of 21 June 2018 which accompanied the proposed EU Settlement Scheme: Statement of Intent published the same day.

As I indicated during our meeting, I agree with you that progress has been made on the Registration Scheme and the natural anxiety of EU citizens, to whom the Scheme is intended, will have been eased by developments in the past two months. The publication of the Statement of Intent should also help a great deal in this regard.

There are, nevertheless, still a number of issues of concern to EU citizens. The purpose of this letter, which I am sending to you on behalf of the European Parliament's Brexit Steering Group and the Chair of the Civil Liberties Committee, is to communicate those remaining concerns to you. We would urge that you take these on board during the consultation and testing phase of the Scheme and before its official launch. Addressing them would also instil confidence on our side that the Registration Scheme will work in the streamlined and user-friendly way that we all want.

The first issue relates to the Independent Monitoring Authority (IMA). In your letter you indicate that the Independent Chief Inspector for Borders and Immigration (ICIBI) will temporarily take on the IMA's responsibilities. We assume that refers to the period between the Scheme's launch in late 2018 and the entry into force of the Withdrawal Agreement expected on 30 March 2019. It is crucial that as of the latter date, the IMA is up and running. Otherwise, it would potentially constitute a breach of Article 152, as the ICIBI would not have the powers and responsibilities outlined in the draft Withdrawal Agreement, which go beyond carrying out inspections. In fact they include conducting inquiries, receiving complaints and, crucially, bringing, on the basis of a complaint, legal actions before a UK court or tribunal. As you say in your letter, and in point 1.9 of the Statement of Intent, establishing the IMA requires primary legislation. We take it that this would be by means of the Withdrawal Agreement Implementation Bill (WAIB). If this is the case it would be important that you provided, in advance of the tabling of that draft legislation, exact details on the powers and

responsibilities of the IMA. We would also be grateful if you could give us a clearer idea of how you propose to establish a right of appeal (Article 19 of the draft Withdrawal Agreement) which is also for us a very crucial and sensitive issue.

Second, many of our concerns with respect to vulnerable citizens, defined as broadly as possible, can be dispelled, in addition to other policies and flanking measures, by having an extensive network of contact points across the country. In the Statement of Intent you indicate that you have established a new user group which focuses particularly on the needs of vulnerable users. This is very much to be welcomed. But more details on the network of contact points should be provided as quickly as possible. This should include details of their physical locations and the services they will provide, to include help with registrations, with digital ID checks and scanning of documents. As regards other flanking measures it is crucial that all eligible citizens are made aware of their right to apply for the Settlement Scheme. In particular, we insist that special attention is given to elderly EU citizens who arrived in the UK a long time ago (especially ILR holders) who may have lost or simply do not retain the relevant documentation to prove residence, as it was never requested from them until now. It is fundamental to ensure that these citizens are not discriminated against or refused residence status for lack of documentation. Further details on how these cases will be dealt with would be very much appreciated.

Third, while we appreciate the assurances in your letter with regard to the processing of registrations, the registration process should not create unnecessary anxiety. Ideally, a short cut-off date should be defined after which the absence of response should be taken as acceptance of the registration. However, if this is not possible and recognising the potential practical challenges of having to deal with many thousands of submissions at the same time, we would ask you to establish a minimum deadline by which the Home Office would notify and justify to the registrant any delays with the registration process and, where appropriate, indicate any further steps the registrant should take. We would also be grateful to learn whether there have been any developments in the talks with Apple to ensure that the ID check on the online Application can be also completed on Apple devices. Additionally, we would reiterate the importance of offering the possibility for all EU citizens to apply 'offline' by means of a paper application and ideally for all registrants to receive a hard copy of their status. Those who will have to submit hard copy identity documents must have these returned to them immediately.

Fourth, concerning the immigration rules which will govern the registration scheme, we welcome the first draft provided in the Statement of Intent document. Nevertheless, we note that these will be enacted as secondary legislation. We would need guarantees that these rules will not be subject to amendment in the future.

One final point on the registration scheme is that while it is good to see that you have reduced the fee for adults and children we still believe that as a matter of principle the process should be cost free. As a very minimum it should, as I said to you, be free for those who were in the UK before the date of the notification. I note that the Mayor of London, where more than 1 million EU citizens reside, is of a similar opinion.

On a related issue we reiterate our deep concerns with regard to legal requirements applicable to the processing of personal data in this context. The new UK Data Protection Act 2018, which implements the General Data Protection Regulation, expressly provides the non-application of essential data protection principles and rights of data subjects to the processing of personal data carried out for immigration purposes. The wording of this exception is made in a broad and general manner that it implies de facto that the processing of personal data of non-UK citizens will not be subject to the provisions of UK Data Protection law for this matter. The European Parliament has already expressed its doubts about the compatibility of this broad and general exception with EU data protection and of the Charter. Any derogation must be applied in exceptional individual cases where it is necessary and proportionate to safeguard a genuinely objective of general interest in a democratic society. Non legally-binding reassurances of the UK authorities would not address the concerns of the European Parliament as long as this exemption remains in the Data Protection Act.

I would be happy to take up your offer of further discussions on the registration scheme at the European Parliament. This could also be the occasion on which to speak on preparations in the other Member States. Your concerns on this are shared by the Brexit Steering Group. While preparations have started, a lot of work still needs to be done and we will scrutinise developments. In this context I have asked Member States to inform the Brexit Steering Group in detail as to where those preparations have got to. You can rest assured that the European Parliament attaches equal importance to guaranteeing the rights of UK citizens in the other Member States.

I am copying this letter to David Davis, Secretary of State for Exiting the EU, Michel Barnier, the EU's Chief Negotiator and Yvette Cooper, chair of the House of Commons Home Affairs Select Committee.

Yours sincerely,



Guy Verhofstadt

c.c.: Mr. David Davis
Mr. Michel Barnier
Ms. Yvette Cooper