Implementation of the UK Withdrawal Agreement

Financial provisions, citizens' rights and the Northern Ireland Protocol

IN-DEPTH ANALYSIS

EPRS | European Parliamentary Research Service

Authors: Ann Neville, Issam Hallak and Sidonia Mazur
Members’ Research Service
PE 698.884 – January 2022
This paper analyses the implementation of the UK Withdrawal Agreement in three key areas: financial settlement, citizens’ rights and the Ireland/Northern Ireland Protocol. It provides an overview of the provisions of the Withdrawal Agreement in these areas and examines the measures adopted to date by the UK and EU to ensure the implementation of these rights and obligations.

It has been produced at the request of the Committee on Constitutional Affairs (AFCO), in support of its implementation report on the UK Withdrawal Agreement (2020/2202(INI)).

AUTHORS
Dr Ann Neville, Issam Hallak and Sidonia Mazur, Members’ Research Service, EPRS.

This paper has been drawn up by the Members’ Research Service within the Directorate-General for Parliamentary Research Services (EPRS) of the Secretariat of the European Parliament.

To contact the author(s), please email: eprs@ep.europa.eu.

LINGUISTIC VERSIONS
Original: EN
Translations: DE, FR
Manuscript completed in December 2021.

DISCLAIMER AND COPYRIGHT
This document is prepared for, and addressed to, the Members and staff of the European Parliament as background material to assist them in their parliamentary work. The content of the document is the sole responsibility of its author(s) and any opinions expressed herein should not be taken to represent an official position of the Parliament.

Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.


Photo credits: © tostphoto / Adobe Stock.
Executive summary

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 (*) (the Withdrawal Agreement or Agreement) establishes the terms of the United Kingdom's orderly withdrawal from the European Union, in accordance with Article 50 of the Treaty on European Union (TEU). The Withdrawal Agreement entered into force on 1 February 2020, after having been agreed on 17 October 2019. This paper provides an overview of the implementation of the Agreement, focusing on three key areas: financial provisions, citizens' rights and the Ireland/Northern Ireland Protocol.

The UK's decision to withdraw from the EU triggered the need to settle the outstanding mutual financial obligations resulting from the UK's EU membership. Sometimes referred to as 'the Brexit bill' or 'the divorce bill', the financial settlement is not a fixed one-off payment, it is rather an arrangement defining the methodology for calculation and the modalities of payments. The value of the financial settlement is impossible to estimate precisely, because it will result from annual out-turns, some paid out well beyond 2020, such as payments resulting from closing past EU multiannual financial frameworks (MFFs) and pension payments to retired staff of the EU institutions. Further uncertainty as to the final total amount of the financial settlement is added by exchange rate fluctuations and contingencies for some EU financial activities.

For the UK, the Union's 2020 budget year was still a financial year with obligations and rights almost identical to those of an EU Member State. In 2020, the UK paid almost €19.4 billion as its contribution to the EU budget. For 2021, the total UK contribution to the EU budget was €6.8 billion, and for 2022, it is set at €11 billion. These amounts will be further adjusted and corrected in the future following the updating of the economic indicators influencing the calculations of own resources and the payment level for EU activities and programmes committed before 2021.

With regard to citizens' rights, the provisions contained in Part Two of the Withdrawal Agreement are designed to protect the rights of both EU and UK citizens who had exercised free movement and made life choices based on the rights flowing from the UK's membership of the EU. This paper discusses the UK's implementation of the citizens' rights provisions of the Withdrawal Agreement and examines the rights established to protect UK citizens resident in the EU at the end of the transition period and who fall under the scope of the Agreement. The Withdrawal Agreement allows Member States and the UK to choose whether or not to require mandatory application as a condition for confirmation of the enjoyment of the rights provided by the Agreement. This is termed the 'constitutive system' and has been adopted by the UK and 13 Member States. The remaining Member States have chosen a declaratory system, meaning that those who comply with the conditions of the Withdrawal Agreement automatically become its beneficiaries.

The UK has implemented the citizens' rights provisions of the Agreement by means of the EU Settlement Scheme (EUSS) which grants eligible EU citizens resident in the UK at the end of the transition period either settled status or pre-settled status, allowing them to reside legally in the UK and enjoy the full suite of rights provided under the Withdrawal Agreement. The EUSS also applies to eligible citizens of the EEA and Switzerland, with which countries the UK negotiated separate agreements. Both the European Commission and the European Affairs Committee of the UK's House of Lords have expressed concerns about the eligibility conditions applied by the UK for access to rights under the EUSS, which differ from those provided in the Withdrawal Agreement. The UK's

(*) Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.
'more generous' approach to evaluating the status of applicants to the EUSS means that both those who fall within the scope of the Withdrawal Agreement and those who do not are eligible for status under the EUSS. This creates a risk of legal uncertainty among EU citizens in the UK as to whether their rights are guaranteed by the Withdrawal Agreement or provided under UK immigration law.

When it comes to the rights offered to UK citizens within scope of the Agreement, the Withdrawal Agreement provides them with rights that are significantly more limited than those that they previously enjoyed as EU citizens. Protected UK citizens do not have free movement rights beyond their host state/state of work and the same limitation applies to recognition of professional qualifications. Although past decisions by the UK or EU Member States to recognise the professional qualifications of those covered by the Agreement remain valid, and recognition procedures pending must be respected, the Agreement does not permit UK nationals to rely on EU law to obtain recognition of additional professional qualifications after the end of the transition period, in the host state, state of work or in any other EU Member State. For these reasons, academic commentators have referred to the rights offered to UK citizens by the Withdrawal Agreement as a 'gilded cage'.

The Withdrawal Agreement also includes a Protocol on Ireland/Northern Ireland, (hereafter the Protocol). It aims to safeguard the Good Friday/Belfast Agreement (GFBA) by avoiding a hard border on the island of Ireland, in a context in which the UK is no longer an EU Member State. As no physical border checks been established between the EU and the UK on the island of Ireland, the Protocol provides for the application of relevant EU law to the UK in relation to Northern Ireland in order to protect the EU single market. As a result, border checks between the EU and the UK are conducted between Northern Ireland and Great Britain in accordance with EU law.

Following the perceived effects of the Protocol on businesses in Northern Ireland and supply chains within the UK, but not only, the UK government has threatened on several occasions to take unilateral action with regard to the application of the Protocol, including, most recently by threatening to invoke the Article 16 procedure provided for in the Protocol. The EU has launched legal action against the UK while, at the same time, engaging in discussions with the UK government. In September 2021, Commission Vice-President Maroš Šefčovič engaged in face-to-face discussions with business, civil society and political representatives in Belfast. Following these consultations, the Commission published a series of non-papers in October, addressing the issues raised and proposing solutions. The papers' suggestions include enhancing and structuring the dialogue with Northern Ireland parties and stakeholders, offering a substantial reduction in border checks on consumer goods, sanitary and phytosanitary (SPS) products, and removing controls on medicines. These suggested solutions were accompanied by demands on the UK, such as the effective completion of border control posts and access to the UK IT system, as well as strict rules on marking and labelling. The parties are currently discussing the solutions.
# Table of contents

1. Introduction .............................................................................................................. 1

2. Financial provisions .................................................................................................. 3
   2.1. Background and value of the EU UK financial settlement .................................. 3
   2.2. Financial provisions of the EU UK Withdrawal Agreement ................................... 3
       2.2.1. UK withdrawal from the Union budget ......................................................... 4
       2.2.2. UK withdrawal from off-budget EU financial arrangements ......................... 4
       2.2.3. Implementation of the Withdrawal Agreement ............................................. 5
       2.2.4. EU budget for 2021 and 2022 ................................................................. 5

3. The protection of citizens' rights .................................................................................. 10
   3.1.1. EU citizens – Who is protected under the Withdrawal Agreement? ................. 10
   3.1.2. What rights are protected by the Withdrawal Agreement? ................................. 11
   3.1.3. Applicable procedures ..................................................................................... 13
   3.1.4. Implementation and monitoring ...................................................................... 18
   3.1.5. Rights of UK citizens under the Withdrawal Agreement .................................. 20

4. The Northern Ireland Protocol .................................................................................... 26
   4.1. The Protocol and the Good Friday / Belfast Agreement ......................................... 26
   4.2. Issues raised by the UK government .................................................................... 28
   4.3. Solutions proposed by the European Commission ............................................... 29
       4.3.1. Engagement with Northern Ireland stakeholders and leaders .................... 29
       4.3.2. Customs ....................................................................................................... 30
       4.3.3. Sanitary and phytosanitary (SPS) measures .................................................. 30
       4.3.4. Medicines ..................................................................................................... 31
   4.4. Positions ............................................................................................................... 32

5. References .................................................................................................................. 34
Table of figures

Figure 1 – How Northern Ireland voters would like their MLAs to vote on the Protocol in the 2024 democratic consent vote _______________________________________________________ 32

Table of tables

Table 1 – Provisional UK contribution to the EU budget ________________________________ 7

Table 2 – Financial provisions of the Withdrawal Agreement ____________________________ 8

Table 3 – Applications from UK and EU citizens for a new residence status in states operating a constitutive system ____________________________________________________________ 23

Table 4 – Applications by UK citizens for a new residence status in Member States operating a declarative system_____________________________________________________________ 24

Table 5 – Outcomes of applications for a new residence status in constitutive systems, by host state ________________________________________________________________ 25
1. Introduction

On 29 March 2017, the UK Prime Minister, Theresa May, notified the European Council of the UK's intention to withdraw from the European Union, formally triggering Article 50 TEU, which provides the legal basis for the process.

In advance of the notification, the EU set out its position at a December 2016 informal meeting of the Heads of State or Government of the 27 Member States, with the presidents of the European Council and European Commission. In line with the principles announced in the statement made at their informal meeting of 29 June 2016, the first step in the process was the adoption by the European Council of guidelines to define the framework for negotiations, in accordance with the Article 50 procedures for withdrawal by a Member State. These set out the positions and principles that the EU aimed to pursue during the negotiations for the UK's withdrawal, while taking account of the framework for its future relationship with the Union, as required by Article 50. The European Council adopted these guidelines on 29 April 2017.

On 3 May 2017, the Commission issued a recommendation for a Council decision authorising the Commission to open negotiations for an agreement with the UK, setting out the arrangements for UK withdrawal from the EU. The negotiations were to be conducted in light of the European Council guidelines, the negotiating directives, and with Parliament's resolution of 5 April 2017, which required the European Council to take that resolution into account when adopting its guidelines and setting out the EU’s principles and positions with regard to the negotiations with the UK.

On 22 May 2017, the Council adopted a decision authorising the opening of Brexit negotiations with the UK and formally nominating the Commission to represent the EU as its negotiator. The Council also adopted the negotiating directives for the talks. The negotiating directives were intended to guide the Commission through the first phase of the negotiations and prioritised those issues identified as 'necessary for an orderly withdrawal of the UK, including citizens' rights, the financial situation and the situation of Ireland', among others.

On 19 June 2017, negotiations between the parties began, focusing on these three key subjects. A first draft withdrawal agreement was endorsed by EU leaders on 25 November 2018, along with a political declaration approving the framework for the future relationship.

Events in the UK, however, involving its Parliament’s rejection of the draft withdrawal agreement, as well as the extension of the Article 50 negotiating period, at the request of the UK, led to the
negotiation of a new agreement, with a revised Protocol on Ireland/Northern Ireland, and a revised political declaration. In line with the Commission’s recommendation, EU leaders endorsed the revised Withdrawal Agreement and approved the political declaration, while the agreement was formally concluded by means of the Council authorising signature of the Agreement and referring it to Parliament for its consent, after which the Council concluded the Withdrawal Agreement on behalf of the EU. The UK ratified the Withdrawal Agreement following its own constitutional arrangements, by means of the Westminster Parliament’s passing of the EU (Withdrawal Agreement) Act in January 2020. At the request of the UK, and in order to allow for the ratification of the Withdrawal Agreement, on 29 October 2019, in accordance with Article 50(3), the European Council had granted the UK a further extension of its EU membership until 31 January 2020.

The UK formally left the European Union at midnight on 31 January 2020. Part Four of the Withdrawal Agreement however provided for a transition period up to 31 December 2020. During this period the UK as a third country no longer took part in EU decision-making, with no further participation in the EU institutions (such as the European Parliament and the Council), EU agencies, offices or other bodies. The UK remained part of the customs union and single market, with all four freedoms and all EU policies still applying. All EU law continued to apply to and in the UK, with the exception of provisions of the Treaties and acts that were not binding upon and in the UK prior to the entry into force of the Withdrawal Agreement. The Court of Justice of the European Union continued to have jurisdiction over the UK during the transition period. The purpose of the transition period was to provide time for the negotiation of the future relationship between the parties, based on the political declaration agreed between the EU and the UK in October 2019.

The EU’s Brexit negotiation priorities were ‘to preserve its interests, those of its citizens, its businesses and its Member States’. The Withdrawal Agreement was designed to ensure the orderly withdrawal of the UK, while protecting the rights of those citizens, both EU and UK, who had exercised free movement and made life choices on the basis of rights deriving from UK membership of the EU. It also aimed to ensure that the EU and UK uphold the financial obligations resulting from the UK’s membership of the EU. In addition, the Withdrawal Agreement supports and protects the maintenance of peace on the island of Ireland, for which the Belfast/Good Friday Agreement is crucial.

This paper focuses on the three key areas of the Withdrawal Agreement, the financial considerations deriving from UK membership of the EU, citizens’ rights, and the Ireland/Northern Ireland Protocol. On citizens’ rights, both sides have repeatedly formally asserted their commitment to adhere to the provisions of the Withdrawal Agreement and to work together to ensure the protection of citizens’ rights. The Ireland/Northern Ireland Protocol, however, remains contentious for the UK, and the outcome of negotiations between the EU and the UK on this issue have still to be determined at the time of writing.

---

10 Communication to the Commission on the endorsement by the Commission of the revised Protocol on Ireland/Northern Ireland included in the Withdrawal Agreement and of the revised Political Declaration setting out the framework for the future relationship between the European Union and the United Kingdom, as agreed at negotiators’ level, as well as on their transmission to the European Council Brussels, 17.10.2019, C(2019) 8000 final.
12 European Council Decision taken in agreement with the United Kingdom extending the period under Article 50(3)TEU, Brussels, 28 October 2019.
13 Revised text of the political declaration setting out the framework for the future relationship between the European Union and the United Kingdom, as agreed at negotiator level on 17 October 2019 to replace the one published in OJ C 66 of 19.2.2019 17 October 2019.
14 European Council (Article 50) guidelines of 29 April 2017.
2. Financial provisions

2.1. Background and value of the EU UK financial settlement

The UK’s decision to withdraw from the EU triggered a need to settle the outstanding mutual financial obligations resulting from the UK’s EU membership. Sometimes referred to as the ‘Brexit bill’ or ‘divorce bill’, an agreement on a financial settlement was one of the key conditions for reaching a deal on the Withdrawal Agreement, along with citizens’ rights and the Northern Ireland protocol. Contrary to initial fears, the agreement on the financial conditions for the UK’s withdrawal from the EU was reached without great controversy and relatively early, at the end of 2017.

The financial settlement as outlined in the Withdrawal Agreement originated in the 8 December 2017 joint report agreed by the European Commission and the UK summarising progress made during the first phase of negotiations on the UK’s withdrawal from the EU.15 The joint report establishing the main principles underpinning the financial settlement agreed a methodology but did not include any estimate of the money involved. The draft withdrawal agreement translated those commitments into detailed obligations for both the UK and the EU.

This early political agreement on the EU-UK financial settlement became law once the Withdrawal Agreement was approved by the UK Parliament and the European Parliament in January 2020. The UK withdrew from the EU on 1 February 2020 and entered a ‘transition period’, which ran until 31 December 2020. Although the Withdrawal Agreement provided an option to prolong the transition period, it was not applied. The EU-UK financial settlement is not a fixed one-off payment, it is rather an arrangement to clear the outstanding mutual commitments of the EU and UK, made during the UK’s membership of the EU. The financial provisions of the Withdrawal Agreement defined the modalities of the settlement, the calculation methodology and modalities for payments. The UK is obliged to cover payments to the EU budget as they fall due.

While the Withdrawal Agreement does not give any estimate of the total value of the financial settlement, it does describe the two sides’ financial relations for the initially envisaged transition years of 2019 and 2020. For those two budgetary years, the UK had the same rights and obligations as if it had remained an EU Member State. Beyond 2020, the UK remained liable to the EU, but those liabilities and assets were impossible to estimate precisely, because they would result from out-turns, some paid out well beyond 2020, such as pensions for retired EU staff.

Further uncertainty as to the final sum of the financial settlement is added by exchange rate fluctuations, contingency for some EU financial activities, and payments resulting from closing the current and past EU multiannual financial frameworks (MFFs).

2.2. Financial provisions of the EU UK Withdrawal Agreement

The EU and the UK agreed to honour the mutual commitments undertaken while the UK was a member of the EU by means of a financial settlement. Part Five of the Withdrawal Agreement deals with those financial provisions. The parties agreed that the currency to be used in calculations and payments concerning the financial provisions part of the Withdrawal Agreement would be the euro.

For 2020, the transition year, the UK contributed to and participated in the implementation of the

15 Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom’s orderly withdrawal from the European Union, 8 December 2017.
Union budget as if it were still an EU Member State. However, amendments to the 2014-2020 MFF Regulation or Decision of 26 May 2014 on the system of own resources adopted on or after the date of entry into force of the Withdrawal Agreement do not apply to the United Kingdom insofar as those amendments have an impact on the United Kingdom’s financial obligations.

The financial settlement refers to the withdrawal of the UK both from the budget of the European Union and from financial commitments outside the EU budget. Those two issues are treated separately in the Withdrawal Agreement.

2.2.1. UK withdrawal from the Union budget

Articles 135 to Article 148 of the Withdrawal Agreement address issues arising from the withdrawal of the UK from the Union budget. EU law concerning the Union’s own resources relating to financial years up until 2020 continues to apply to the UK after 31 December 2020, including adjustments after that date. The same applies to the Union’s programmes and activities committed under the multiannual financial framework for the years 2014 to 2020 (‘the 2014-2020 MFF’) and previous financial perspectives, until the closure of those Union programmes and activities.

The UK is liable to the Union for its share of the financing of the Union’s liabilities incurred until 31 December 2020. In particular, the UK is liable for its share of the Union’s liability for pension rights and rights to other employment-related benefits accrued on or before 31 December 2020. According to Article 143, the UK is liable to the Union for its share of contingent financial liabilities relating to loans for financial assistance, the European Fund for Strategic Investments (EFSI), the European Fund for Sustainable Development (EFSD) and the external lending mandate. The UK is also liable for its share of payments in relation to legal cases concerning the financial interests of the Union relating to the budget.

As for the liabilities of the EU towards the UK, the Withdrawal Agreement states that in the case of a fine decided upon by the Union after 31 December 2020, the Union must reimburse the UK its share of the fine collected by the Union once that fine has become definitive. The Union is liable to the UK for its share of financial instruments financed by the programmes financed under the 2014-2020 MFF or earlier financial frameworks. The Union is also liable to the UK for its share of the net assets of the European Coal and Steel Community in liquidation. Lastly, the Union is liable to the UK for its share of the Union’s investment in the paid-in capital of the European Investment Fund as of 31 December 2020.

2.2.2. UK withdrawal from off-budget EU financial arrangements

The Withdrawal Agreement also deals with the withdrawal of the UK from EU financial arrangements other than the Union budget, such as the European Central Bank, the European Investment Bank (EIB), EU trust funds and the European Development Fund (EDF). The European Central Bank must reimburse the Bank of England for the paid-in capital provided by the Bank of England. The UK remains liable for financial operations approved by the EIB before the date of entry into force of the Withdrawal Agreement. The EIB must pay the UK an amount equal to the UK’s share of the paid-in subscribed capital of the EIB. The UK must honour its commitments to the EU trust funds established before the date of entry into force of the Withdrawal Agreement and to the Facility for Refugees in Turkey. The UK will remain party to the EDF until the closure of the 11th EDF and all previous

17 Decision 2014/335/EU, Euratom.
unclosed EDFs. The UK must honour the commitments it made to the EU Emergency Trust Fund for Africa, and to the Facility for Refugees in Turkey.

2.2.3. Implementation of the Withdrawal Agreement

Originally drafted with a view to implementation from the beginning of 2019, many Withdrawal Agreement provisions referred to the 2019 and 2020 budget years as transition years. However, as the Withdrawal Agreement entered into force only at the end of 2019, it did not concern the 2019 Union budget, but only EU budget years starting from 2020. 2020 was a financial year with obligations and rights for the UK almost identical to those of an EU Member State; that year the UK paid almost €19.4 billion as its contribution to the EU budget. 18

The Withdrawal Agreement establishes six specialised committees, including a Specialised Committee on Financial Provisions. This committee has met so far four times, as compared with nine meetings of the Specialised Committee on Issues related to the implementation of the Protocol on Ireland/Northern Ireland, or eight meetings of the Specialised Committee on Citizens’ Rights.

At the third meeting of the Specialised Committee on Financial Provisions, held on 26 April 2021, the EU and the UK noted positive engagement on the second formal reporting package under the Withdrawal Agreement, which was submitted by the European Commission at the end of March 2021, and on the communication of 16 April 2021 of the first document specifying the amounts to be paid in 2021 in relation to the settlement of the UK’s net liabilities under the Withdrawal Agreement. 19 It was agreed that this initial payment would be made in four monthly instalments, from 30 June 2021. The European Commission committed to submit payment communications to the UK twice annually, in April and September, until outstanding net liabilities had been extinguished.

At its fourth meeting, on 12 November 2021, the Specialised Committee on Financial Provisions noted the communication of 16 September 2021 of the second document specifying the relevant amounts to be paid in relation to the settlement of the UK’s net liabilities under the Withdrawal Agreement. 20 Payments would be made in eight equal monthly instalments, which began at the end of October 2021. The European Commission agreed to continue to submit payment communications to the UK twice annually, in April and September. The specialised committee also noted preparations for the third formal reporting package due at the end of March 2022.

In order to implement the Withdrawal Agreement, the UK enacted the 2020 European Union (Withdrawal Agreement) Act. 21 Section 20 of this act deals with the financial provisions. It authorises the UK Treasury to make payments to the European Union until March 2021. As of March 2021, the UK government is required to ask the UK Parliament for the funds each year.

2.2.4. EU budget for 2021 and 2022

In June 2021, the consolidated annual accounts of the European Union for the 2020 financial year included liabilities and receivables for the EU following the provisions of the Withdrawal

---

19 Joint statement following the third meeting of the Specialised Committee on Financial Provisions, 26 April 2021.
20 Joint statement following the fourth meeting of the Specialised Committee on Financial Provisions, 12 November 2021.
Agreement.\footnote{Consolidated annual accounts of the European Union, financial year 2020.} The estimate of net receivables from the UK was €47.5 billion, €6.8 billion to be paid by the UK in 2021 and €40.6 billion to be paid after 2021. The European Commission’s estimate sparked controversy in the UK when compared with the estimate by the UK’s Office for Budget Responsibility (OBR). The OBR estimated in its March 2021 economic and fiscal outlook that the net cost of the financial settlement for the UK would be much lower, around £34 billion.\footnote{Office for Budgetary Responsibility, Economic and fiscal outlook – March 2021.} When questioned in the House of Lords on 15 July 2021, Lord Frost, Minister of State at the Cabinet Office, responded that the UK government estimated the cost of the net financial settlement to be £37.3 billion.\footnote{UK Parliament, Hansard, Post-Brexit Financial Settlement, Vol. 813; debated on Thursday 15 July 2021.} According to his statement the difference between the EU and UK estimates had arisen from the different calculation and forecasting methods used. Nevertheless Lord Frost repeated that, ‘We certainly stand by the financial agreement that we negotiated in the Withdrawal Agreement’.

Table 1 shows the detailed amounts of the UK contributions to the Union budget for the financial years 2021 and 2022, with the corresponding articles of the Withdrawal Agreement. For 2021, the total UK contribution has been €6.8 billion, and for 2022 it is estimated at €11 billion. These amounts will be adjusted and corrected following updates on the economic indicators influencing the calculations of the own resources and following the out-turn of the EU budget, in particular the implementation level of EU activities and programmes.

It should be underlined that the bulk of the UK contribution to the Union budget, both in 2021 and 2022, consists of payments following pre-2021 commitments linked to EU programmes and activities. Those commitments were made under the 2014-2020 and earlier MFFs and as the payments fall due it is the UK’s responsibility to pay its share. This is referred to as ‘reste à liquider’ (RAL) in accordance with the obligation under Article 140. For 2021, RAL payments due by the UK were set at over €7 billion and for 2022 they are budgeted at almost €11 billion. It should be clarified that the EU commits funds but payments sometimes follow much later, even years after they were committed. The payments schedule falling due is burdened by uncertainty, some commitments are never paid, or not paid fully, as the beneficiaries might not request them or the requests might be ineligible. While the UK has an obligation to pay, UK beneficiaries of EU programmes and activities also retain their right to benefit from those payments. The return flows from the EU to the UK, whether to private or public beneficiaries of EU funds managed directly by the European Commission, are not visible in the UK government accounts as they are paid directly to the beneficiaries.

In line with Article 142 of the Withdrawal Agreement, the UK had to pay into the EU budget its share of staff pensions and related benefits acquired by EU staff up until 31 December 2020. The first UK payment relating to staff pensions is due in 2022. It has been set at almost €254 million. Contingent liabilities linked to revenue from the guarantee funds and financial instruments reduced the UK contribution in 2021 by almost €140 million. Although no estimate has been budgeted for 2022, it can be assumed that those liabilities will reduce the UK contribution in 2022 as well.
Table 1 – Provisional UK contribution to the EU budget

<table>
<thead>
<tr>
<th>Description</th>
<th>Withdrawal Agreement</th>
<th>2021</th>
<th>2022</th>
</tr>
</thead>
<tbody>
<tr>
<td>RAL 'reste à liquider' prior to 2021 (including net financial corrections)</td>
<td>Article 140</td>
<td>7 171 796 760</td>
<td>10 818 886 434</td>
</tr>
<tr>
<td>Union’s liabilities/pensions</td>
<td>Article 142</td>
<td>10 861 762</td>
<td>253 964 699</td>
</tr>
<tr>
<td>Traditional own resources</td>
<td>Articles 140(4), 49(2)</td>
<td>-406 761 964</td>
<td>No information</td>
</tr>
<tr>
<td>Own resources corrections and adjustments, of which:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) Surplus/deficit of 2020</td>
<td>Article 136(3)(a)</td>
<td>-81 962 641</td>
<td>-136 604 402</td>
</tr>
<tr>
<td>c) VAT and GNI</td>
<td>Article 136</td>
<td>81 906 199</td>
<td>137 400 327</td>
</tr>
<tr>
<td>d) TOR</td>
<td>Articles 136, 140(4)</td>
<td>29 686 725</td>
<td>18 076 859</td>
</tr>
<tr>
<td>4. Fines</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5. Contingent liabilities, of which:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>a) ELM, EFSI, EFSD, loans (Guarantee funds)</td>
<td>Article 143</td>
<td>-93 304 525</td>
<td>p.m.</td>
</tr>
<tr>
<td>b) Financial instruments</td>
<td>Article 144</td>
<td>-46 298 550</td>
<td>p.m.</td>
</tr>
<tr>
<td>c) Legal cases (including fines)</td>
<td>Article 147</td>
<td>20 654 711</td>
<td>p.m.</td>
</tr>
<tr>
<td>ECSC net assets</td>
<td>Article 145</td>
<td>-36 656 456</td>
<td>-36 656 456</td>
</tr>
<tr>
<td>EIF investment</td>
<td>Article 146</td>
<td>-6 609 097</td>
<td>-6 609 097</td>
</tr>
<tr>
<td>Access to networks/systems/databases</td>
<td>Articles 49(2),50,53,62(2), 63(1)(e),63(2),99(3) and 100(2)</td>
<td>136 707</td>
<td>1 856 801</td>
</tr>
<tr>
<td>Equipment and other property related to the provision of safeguards (under Euratom Treaty)</td>
<td>Article 84(1)</td>
<td>42 481</td>
<td>No information</td>
</tr>
<tr>
<td>Net financial corrections related to 2014-2020 or previous programme periods</td>
<td>Article 140</td>
<td>-13 221 459</td>
<td>No information</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>6 821 468 807</td>
<td>11 016 705 653</td>
</tr>
</tbody>
</table>

Source for 2021: Amending budget 4/2021, awaiting publication in the Official Journal.\(^25\)
Source for 2022: Amending Letter No 1 to the draft general budget of the EU for the financial year 2022.\(^26\)

\(^25\) [Amending budget 4/2021](#).
\(^26\) [Amending Letter No 1 to the draft general budget of the European Union for the financial year 2022](#).
### Table 2 – Financial provisions of the Withdrawal Agreement

<table>
<thead>
<tr>
<th>Withdrawal Agreement – Part five: Financial provisions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter 1 General provisions</td>
</tr>
<tr>
<td>Article 133 Currency</td>
</tr>
<tr>
<td>Article 134 Facility offered to auditors</td>
</tr>
<tr>
<td>Article 135 The United Kingdom’s contribution to and participation in the implementation of the Union budget for the year 2020</td>
</tr>
<tr>
<td>Article 136 Provisions applicable after 31 December 2020 in relation to own resources</td>
</tr>
<tr>
<td>Article 137 The United Kingdom’s participation in the implementation of the Union programmes and activities in 2020</td>
</tr>
<tr>
<td>Article 138 Union law applicable after 31 December 2020 in relation to the United Kingdom’s participation in the implementation of the Union programmes and activities committed under the MFF 2014-2020 or previous financial perspectives</td>
</tr>
<tr>
<td>Article 139 Share of the United Kingdom</td>
</tr>
<tr>
<td>Article 140 Outstanding commitments</td>
</tr>
<tr>
<td>Article 141 Fines decided upon before or on 31 December 2020</td>
</tr>
<tr>
<td>Article 142 Union liabilities at the end of 2020</td>
</tr>
<tr>
<td>Article 143 Contingent financial liabilities related to loans for financial assistance, EFSI, EFSD and the external lending mandate</td>
</tr>
<tr>
<td>Article 144 Financial instruments under direct or indirect implementation financed by the programmes of the MFF 2014-2020 or under earlier financial perspectives</td>
</tr>
<tr>
<td>Article 145 The European Coal and Steel Community</td>
</tr>
<tr>
<td>Article 146 Union investment in the EIF</td>
</tr>
<tr>
<td>Article 147 Contingent liabilities related to legal cases</td>
</tr>
<tr>
<td>Article 148 Payments after 2020</td>
</tr>
<tr>
<td>Chapter 2 The United Kingdom’s contribution to and participation in the Union budget</td>
</tr>
<tr>
<td>Article 149 Reimbursement of the paid-in capital</td>
</tr>
<tr>
<td>Chapter 3 European Central Bank</td>
</tr>
<tr>
<td>Article 150 Continued liability of the United Kingdom and reimbursement of the paid-in capital</td>
</tr>
<tr>
<td>Article 151 Participation of the United Kingdom in EIB group after the withdrawal date</td>
</tr>
</tbody>
</table>
### Withdrawal Agreement – Part five: Financial provisions

<table>
<thead>
<tr>
<th>Chapter 5</th>
<th>Article 152</th>
<th>Participation in the European Development Fund</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Development Fund and the United Kingdom’s guarantee under the EDF</td>
<td>Article 153</td>
<td>Reuse of the decommitments</td>
</tr>
<tr>
<td>Internal Agreements</td>
<td>Article 154</td>
<td>The United Kingdom’s guarantee under the successive</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EDF Internal Agreements</td>
</tr>
<tr>
<td>Chapter 7</td>
<td>Article 156</td>
<td>The United Kingdom’s obligations from the date of</td>
</tr>
<tr>
<td>Agencies of the Council and common security and defence policy operations</td>
<td></td>
<td>entry into force of this Agreement</td>
</tr>
<tr>
<td></td>
<td>Article 157</td>
<td>The United Kingdom’s obligations after 31 December 2020</td>
</tr>
</tbody>
</table>
3. The protection of citizens' rights

At the European Council meeting of 29 April 2017, EU leaders formally adopted the EU-27 priorities for the negotiations on the withdrawal of the United Kingdom from the EU under Article 50 TEU.27 The need to guarantee EU and UK citizens' rights was foremost, with Donald Tusk, then President of the European Council, stating: 'the number one priority for the EU and the UK' should be to find 'solid guarantees for all citizens and their families who will be affected by Brexit'.28

The European Council’s position with regard to citizens' rights was set out in its guidelines of 29 April and 15 December 2017, which aimed to protect 'citizens who have built their lives on the basis of rights flowing from UK membership of the EU'.29

This desire was given effect by means 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 (the Withdrawal Agreement or WA) which entered into force on 1 February 2020. While 31 January 2020 was the date on which the UK formally left the EU, both parties agreed to a transition period from 1 February 2020 to 31 December 2020, during which the UK was no longer an EU Member State but EU law still applied to, and in, the UK (Article 126 WA). This included EU law on the free movement of EU citizens, which continued to apply in full during the transition period. This meant that EU citizens were able to enjoy their EU free movement rights in the UK, and UK citizens in the Member States, until the end of 2020.

3.1.1. EU citizens – Who is protected under the Withdrawal Agreement?

Part Two of the Withdrawal Agreement deals with citizens' rights and protects the rights of both EU citizens residing in the UK and UK nationals residing in one of the 27 EU Member States up until the end of the transition period, where such residence is in accordance with EU law on free movement (Article 10 WA). It also extends to frontier workers, defined under Article 9(b) WA as 'Union citizens or United Kingdom nationals' who 'pursue an economic activity in accordance with Article 45 or 49 TFEU in one or more States in which they do not reside'. These are the direct rights-holders under the Withdrawal Agreement.

The protection offered under the Withdrawal Agreement extends to the family members of citizens in the above categories. Paragraphs 1 to 4 of Article 10 WA set out who falls within the scope of the agreement on the basis of their family ties with rights-holders under the Withdrawal Agreement. The Commission’s Guidance Note on Part Two of the Withdrawal Agreement30 states that based on the provisions of Directive 2004/38/EC (the Citizens' Rights Directive),31 the agreement distinguishes between 'core' family members (under Article 9(a)WA corresponding to Article 2(2) of Directive

---

27 Meeting of the Special European Council (Article 50), 29 April 2017.
28 Remarks by President Tusk ahead of the Special European Council (Article 50) of 29 April 2017.
30 Guidance Note on Part Two of the Withdrawal Agreement.
31 Directive 2004/38/EC.
The Withdrawal Agreement applies to ‘core’ family members, whether they are residing in or outside the host State. Article 10(1)(e)(i) WA covers ‘core’ family members who have resided in the host State at the end of the transition period as family members of an EU citizen exercising Union free movement rights in the host State. Article 10(1)(e)(ii) WA applies to ‘core’ family members who have not moved to the host State by the end of the transition period and who are given the right to join the rights-holder in the host State at any time after the end of the transition period. The family members must comply with the conditions of Article 2(2) of Directive 2004/38/EC at the time they seek residence in the host state under the Withdrawal Agreement.

The Withdrawal Agreement also applies to ‘core’ family members who have acquired an independent right to reside in the host State (Article 10(1)(f) WA) and ‘extended’ family members already residing in the host State (10(2) WA). ‘Extended’ family members, as defined by Article 3(3) of Directive 2004/38/EC, with a pending application to join the rights-holder in the host State lodged before the end of the transition period, are covered under Article 10(3) WA. The duly attested partners of a rights-holder, as defined under Article 3(2)(b) of Directive 2004/38/EC, residing outside the host State at the end of the transition period, also fall within the scope of the Withdrawal Agreement, as long as the relationship was already durable and continued uninterrupted before the end of the transition period.

3.1.2. What rights are protected by the Withdrawal Agreement?

The Withdrawal Agreement allows both EU citizens residing in the UK and UK nationals residing in the EU-27 at the end of the transition period to continue to live in their host State, exercising their rights based on EU law. The conditions of residence are based on those under EU free movement law, as set out in Directive 2004/38/EC. Article 7 of this directive provides a right of residence for up to five years for those who work or have sufficient financial resources and health insurance, while Article 16 confers a right of permanent residence on those who have resided legally in the host State for five years, or sooner under the provisions of Article 17. Therefore to enjoy these rights under the Withdrawal Agreement, EU citizens and UK nationals must be workers or self-employed, or have sufficient resources and health insurance, or be family members of a person who fulfils these conditions, or have already acquired the right of permanent residence and thus no longer be subject to these conditions.

32 Commission Notice, Guidance Note relating to 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, Part Two – Citizens’ Rights, 2020/C 173/01, C/2020/2939. ‘Core’ family members are defined under Article 9(a)(i) WA by reference to Article 2(2) of Directive 2004/38/EC (the Citizens’ Rights Directive) which defines family members as spouse, registered partner, and direct descendants under the age of 21 or who are dependents, and the dependent direct relatives in the ascending line of the citizen or their spouse or partner. The Withdrawal Agreement applies both to direct descendants born, or adopted, by the right holder before the end of the transition period under Article 10(1)(e)(ii) WA and after the end of the transition period under Article 10(1)(e)(iii) WA.

33 Article 2.2(a) of Directive 2004/38/EC defines extended family members as:

‘any other family members, irrespective of their nationality, not falling under the definition in point 2 of Article 2 who, in the country from which they have come, are dependants or members of the household of the Union citizen having the primary right of residence, or where serious health grounds strictly require the personal care of the family member by the Union citizen;

b) the partner with whom the Union citizen has a durable relationship, duly attested.’
Physical presence in the host State at the end of the transition period is not required to benefit from the Withdrawal Agreement. Temporary absences that do not affect the right of residence, and longer absences not affecting the right of permanent residence, are accepted.

However, an absence of more than five years from the host State means that the person concerned will no longer be a beneficiary of the Withdrawal Agreement.34

Those legally resident in the host State for less than five years and who have not yet acquired permanent residence rights will be able to continue to reside in the host State and acquire permanent residence there after the end of the transition period (Article 13 WA).

Chapter two of Part Two of the Withdrawal Agreement deals with the rights of workers and the self-employed, based on the rights which they enjoy under Articles 45 TFEU and Regulation (EU) 492/2011 (on freedom of movement for workers within the EU) and Articles 49 and 56 TFEU respectively. These include the right not to be discriminated against on the grounds of nationality with regard to employment, remuneration and other conditions of work and employment, as well as housing and access to education for their children, where those children are residing in the host State.

Chapter three of Part Two of the Withdrawal Agreement deals with the recognition of professional qualifications. Past decisions by the UK or EU Member States to recognise the professional qualifications of those covered by the Agreement remain valid, while pending recognition procedures must be finalised and upheld. It should be noted however that the recognition of professional qualifications provided under the Withdrawal Agreement applies to the host state or state of work only, meaning that for UK citizens their rights to recognition of professional qualifications are more limited than those they enjoyed as EU citizens (see Part II below for more details).

Title III of Part Two of the Withdrawal Agreement deals with the coordination of social security systems and ensures that people protected by the agreement maintain their rights to healthcare, pensions and other social security benefits. It provides that the full range of EU social security coordination law is extended to the individuals within the scope of Title III of the Agreement. This includes the general principle of non-discrimination (Article 31(1) WA by reference to Regulation 883/2004, Article 4); access to pensions (including the principles of exportability and aggregation) (Article 31(1) WA by reference to Regulation 883/2004, Articles 3(1)(d), 6, 7, 50 and following); access to unemployment benefit (Article 31(1) WA by reference to Regulation 883/2004, Articles 3(1)(d), 6, 7, 61ff); and access to healthcare (Article 31(1) WA by reference to Regulation 883/2004, Article 3(1)(a), 7, 17 and following).

Article 33(1) WA states that the provisions on the coordination of social security systems applicable to Union citizens must also apply to nationals of Iceland, Liechtenstein, Norway, and Switzerland, provided these states have concluded and apply corresponding agreements with the UK that apply to EU citizens and, on the other hand, with the EU that apply to UK nationals. The aim of this provision is to protect the rights of the citizens of Iceland, Liechtenstein, Norway and Switzerland as provided under Title III of the Agreement, just as if they were citizens of an EU Member State, where

34 Withdrawal Agreement, Article 15.3.
Implementation of the UK Withdrawal Agreement

there is a triangular situation involving a Member State, the UK and, as applicable, Iceland, Liechtenstein, Norway or Switzerland.35

Article 39 of the Withdrawal Agreement ensures that the rights provided in the citizens' rights part of the Agreement will be enjoyed for the lifetime of those concerned, unless they cease to meet the conditions required in Part Two.

It should be noted that the Withdrawal Agreement, in Article 3 of the Protocol on Ireland/Northern Ireland, explicitly provides for the continuation of the Common Travel Area agreement between the UK and Ireland, and permits more favourable treatment of the nationals of both states than that provided under the Withdrawal Agreement (Article 38 WA).36 Article 3 of the Ireland/Northern Ireland Protocol also obliges the UK to ensure that rights under the Common Travel Area arrangements do not affect Ireland's obligations under EU law with regard to free movement to, from and within Ireland for EU citizens and their family members.

3.1.3. Applicable procedures

The Withdrawal Agreement permits the host State to decide whether or not to require a mandatory application as a condition for the enjoyment of rights under the Withdrawal Agreement. This is termed the 'constitutive system' and has been adopted by the UK and 13 Member States. The remaining Member States have chosen a declaratory system, meaning that those who comply with the conditions of the Withdrawal Agreement automatically become its beneficiaries.37

Where a constitutive system is chosen, Article 18 WA provides that the administrative procedures involved must be 'smooth, transparent and simple' and administrative costs must not exceed those imposed on nationals of the host State for obtaining similar documents. Those already holding a permanent residence document may exchange it free of charge for a new residence document under the Withdrawal Agreement. Article 18 WA further provides a minimum six-months' grace period during which EU and UK citizens living in countries operating a constitutive system retain their residency rights and can apply for a new residence status in their host State. The UK chose the minimum six-month period as a deadline for the receipt of residency applications, meaning that EU nationals and their family members had to apply for regularisation of their status by 30 June 2021.

The UK set up the EU settlement scheme (EUSS)38 to implement the UK's obligations to EU citizens and their family members under the Withdrawal Agreement, as well as those covered by the EEA/EFTA Separation Agreement that the UK concluded with Iceland, Norway and Liechtenstein, and the Swiss Citizens' Rights Agreement.39 The EUSS requires eligible EU citizens who have lived in the UK for five years or longer to apply for what is termed 'settled status,' which in turn allows them to remain in the UK indefinitely. Eligible EU citizens (as well as EEA/EFTA citizens) who have lived in the UK for less than five years on application to the EUSS are given 'pre-settled status,' which gives them temporary leave to remain in the UK for five years. To remain in the UK beyond this period they must apply again to the EUSS for settled status to permit them to remain in the UK indefinitely.

36 See Department of Foreign Affairs, The Common Travel Area.
37 See Residence rights of UK nationals and their family members under the Citizens' Rights part of the Withdrawal Agreement – overview of implementation.
38 For details see the UK government EUSS on-line application web page.
39 Department for Exiting the European Union, EEA EFTA Agreement and Explainer (20 December 2018). The provisions of these agreements broadly reflect those of the Withdrawal Agreement with regard to citizens' rights.
at the end of the five-year temporary period, or when they have accumulated five years' residence
in the UK. Failure to do so will mean that those EU citizens will lose their leave to remain under UK
immigration law, even though they fall within the scope of the Withdrawal Agreement.

Article 18.1(d) WA obliges the competent authorities of those states with a constitutive system to
'assess all the circumstances and reasons for not respecting the deadline and [the competent
authorities] shall allow those persons to submit an application within a reasonable further period of
time if there are reasonable grounds for the failure to respect the deadline'.

By 31 October 2021, the UK Home Office, the Government department responsible for
implementing the citizens' rights element of the Withdrawal Agreement, had received 6 287 700
applications, of which some were repeat applications, leaving the Home Office to estimate that
5 548 440 people – EU, EEA and Swiss citizens as well as non-EEA national family members and
eligible EU, EEA and Swiss nationals not resident in the UK – applied to regularise their status in the
UK by the deadline for receipt of applications for settled status under the EUSS.\footnote{Home Office, EU Settlement Scheme statistics, last updated 25 November 2021.}\footnote{Home Office, EU Settlement Scheme quarterly statistics, June 2021, Updated 21 September 2021.} The EUSS checks
three basic requirements: identity, proof of UK residency and suitability. According to Home Office
statistics, of the applications concluded by 31 October 2021, 52 % were granted settled status and
42 % pre-settled status. It refused 3 % of applications, while 2 % were withdrawn and another 2 %
were invalid. Of the 55 590 applications refused in the period up to 30 June 2021, more than 99 %
were refused on eligibility grounds and fewer than 1 % on suitability.\footnote{For the hostile environment policy see: M. Griffith and C. Yeo, 'The UK’s hostile environment: Deputising immigration control', Critical Social Policy, Vol. 41(4), 2021, pp. 521–544.} Concerns have been raised about what will happen to EU citizens who missed the deadline for
applications and therefore do not have a valid immigration status after June 30 2021. Home Office
statistics show that 236 840 applications were received after 30 June 2021.\footnote{The Migration Observatory, Unsettled Status – 2020: Which EU Citizens are at Risk of Failing to Secure their Rights after Brexit? 24 September 2020. See also Home Office Official Statistics: EUSS, quarterly statistics, June 2021. The Home Office reports that of the concluded applications made by those aged 65 and over, 71 % resulted in a settled
On 6 August 2021 the Home Office announced that it would grant temporary protection to late applicants to the EUSS, as well as family members seeking reunification with rights-holders under the Withdrawal Agreement, who will be provided with temporary protection for three months after their arrival in the UK, pending the outcome of an EUSS application made during that period, and of any appeal.\(^\text{47}\) In its response to the concerns raised by the European Affairs Committee of the UK House of Lords on this matter, the UK Government stated that ‘on receipt of a valid application by a late applicant, a certificate of application will be issued which can then be relied upon to demonstrate their rights under the Citizens' Rights Agreements’. With regard to the potential impact of the hostile environment policy on those who cannot demonstrate their status it went on to say:

\(\text{The Government will amend the relevant regulations in due course to reflect that an EUSS certificate of application issued in response to a valid application made after 30 June 2021 is an accepted document demonstrating a right to work or rent, when verified by the employer and landlord checking services. In the meantime, we will rely on the direct effect of the Citizens' Rights [sic] Agreements to give effect to temporary protection.}\(^\text{48}\)

Commentators have pointed to the problems likely to be generated by the EUSS’s requirement that EU/EEA/Swiss citizens with pre-settled status make a second application to the scheme, this time for settled status, in order to provide them with indefinite leave to remain in the UK. These problems include the difficulties that the Home Office will have to contact the 43% of applicants to the EUSS scheme who have been given pre-settled status, each with their own individual deadline for application for settled status, informing them of the need to apply to regularise their immigration status in the UK. It should also be noted that an EU citizen’s failure to make an application for settled status before their pre-settled status expires means automatic loss of their UK residence status, and with it the loss of employment, healthcare, and education rights, even though they enjoy these rights under the Withdrawal Agreement. The EU expressed concerns about this issue in the joint statement following the eighth meeting of the Specialised Committee on Citizens’ Rights in September 2021 and called upon the UK to resolve the matter.\(^\text{49}\)

Commentators highlight the difficulties that an EU/EEA/Swiss citizen may encounter in attempting to apply for settled or pre-settled status due to the Home Office’s insistence on a digital-only approach to the application process. EU/EEA/Swiss citizens are likely to encounter further difficulties attempting to demonstrate their immigration status given that the UK Home Office provides proof of settled and pre-settled status in digital format only (as permitted under Article 18.1 WA).\(^\text{50}\) Proof of their status can only be accessed through a government website.\(^\text{51}\) There is a special function for proving status to someone else (the ‘view and prove’ function), for example an employer or a landlord, whereby a person with status under the EUSS must share a 6-digit code with them. If the status holder acquires a new passport, national identity card, phone number or email address or

\(^\text{47}\) See Home Office, Temporary protection for more applicants to the Settlement Scheme, published 6 August 2021. The EU in its joint statement issued following the eighth meeting of the Specialised Committee on Citizens’ Rights in September 2021 indicated that it had concerns about the rights of extended family members to apply for a new residence status from within the UK when they had travelled to join EU citizens resident in the UK.


\(^\text{49}\) Joint statement following the eighth meeting of the Specialised Committee on Citizens’ Rights, 16 September 2021.

\(^\text{50}\) See for instance the submission made to the House of Lords European Affairs Committee, Citizens’ Rights, 1st Report of Session 2021-22, HL Paper 46, July 2021 by AIRE, an organisation funded by the Home Office to assist vulnerable EU citizens to apply to the EUSS.

\(^\text{51}\) See UK government website ‘View and prove your immigration status’.
legally changes their name, they must update these details by logging into their online status and can only change their details if they have access to the email account and mobile phone number used in their application. In its submission to the Independent Monitoring Authority, the body charged with monitoring UK application of the Withdrawal Agreement, the 3million, the civil society group representing the interests of EU citizens in the UK, highlighted the numerous problems that the digital-only approach to demonstrating status was posing for EU citizens in accessing and demonstrating their status. It has also pointed out that the UK government has announced that this digital-only means of proving status expressly does not apply to British citizens. Given the UK’s hostile environment policy, which requires immigrants to prove their immigration status to obtain housing, employment, or access to healthcare, welfare benefits or education, these requirements pose real risks to EU, EEA and Swiss citizens in the UK (especially those in the vulnerable category), as illustrated by the 'Windrush Scandal'. It also calls into question the UK’s compliance with the Withdrawal Agreement which requires under Article 18.1(e) 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’. The differing approach applied to British nationals and EU citizens with regard to means of proving status may also be seen as creating a possible breach of the non-discrimination clause provided by Article 12 WA. Given the above it is perhaps not surprising that it appears that EU citizens living in the UK are experiencing a ‘significant lack of trust and confidence in [UK] public bodies’, with many ‘not confident that their rights will be upheld’. The House of Lords European Affairs Committee in its report on citizens’ rights has argued that the absence of a physical document creates the risk that many EU citizens, including the elderly and people who are vulnerable or digitally challenged, will struggle to prove their rights. They also point out the risk that the complexity of proving digital status will lead to discrimination against EU citizens by landlords and employers. They state:

*We strongly recommend that the Government offer holders of settled or pre-settled status the additional option of requesting physical documents, which would complement rather than replace their existing digital status. This would be of particular benefit to those currently disadvantaged by digital-only status.*

They further asked the UK government to clarify why it adopts the position of:

welcoming the EU’s decision to issue a physical document to all UK citizens falling within the scope of the Withdrawal Agreement, while resisting calls from many quarters to provide EU citizens with physical proof of their rights under the UK’s system and ask it to clarify why it holds these contrary positions.

Their concerns are shared by the European Parliament, which in a January 2020 resolution on implementing and monitoring the provisions on citizens’ rights in the Withdrawal Agreement

---

52 The3million, The3million submission to Independent Monitoring Authority, August 2021.
53 UK Government press release, Plans for governing body to make digital identities as trusted as passports, 19 July 2021.
54 This involved long-term lawful residents in the UK, from Commonwealth countries (former British empire colonies) who had come to the UK from 1948 onwards, with a right of entry and residence as ‘Citizens of the United Kingdom and Colonies’ or Commonwealth citizens. They retained these rights after the Immigration Act 1971 removed them from new entrants, but their rights were protected in law, not by physical documents. With the introduction of the hostile environment policy, these residents (many elderly, working class and of ethnic minority status), were particularly likely to face immigration checks, but found themselves unable to prove their lawful status for which they carried the burden of proof. Many lost their jobs and homes, were denied pensions or healthcare, and even detained or deported. See: BBC News explainer on the Windrush generation.
55 This was the finding of the Independent Monitoring Authority survey on European citizens’ concerns after Brexit.
pointed out that: 'greater certainty and a sense of security would be generated for EU-27 citizens in the UK if they were issued with a physical document as proof of their right to reside in the UK'.57

Parliament also expressed concern about the risk of discrimination against EU citizens in employment or access to housing caused by the fact the proof of their status was exclusively digital.

In its response to the concerns expressed by the House of Lords on this issue, the UK Government rejected the possibility of providing the additional option to request physical documents as proof of settled or pre-settled status stating:

_The Government is moving towards a digital immigration system and does not accept it is necessary for EU citizens with settled or pre-settled status under the EUSS to have a physical document evidencing this, in addition to digital status._

In indirect acknowledgement of the difficulties that the hostile environment policy's obligation that a migrant demonstrate their legal migration status to access public services, employment and accommodation, it went on to say:

_We are taking steps to reduce the number of circumstances in which individuals need to provide evidence of their immigration status. This includes the development of services to make the relevant immigration status information available automatically through system to system checks with other government departments and the NHS. This will mean that, at the point at which a person seeks to access public services such as NHS healthcare or the benefits system, the service provider will check status directly with the Home Office, removing the need for the individual to prove their status._58

A further problem arises relating to the alignment of the EUSS with the Withdrawal Agreement. The eligibility conditions for access to rights under the EUSS differ from those under the Withdrawal Agreement. The UK’s EUSS is 'more generous' in that it grants pre-settled and settled status based on residence in the UK, without the applicant having to prove that they were exercising EU free movement rights when they arrived in the UK, as required by the Withdrawal Agreement. The UK's approach to evaluating the status of applicants to the EUSS means that both those who are in the scope of the Withdrawal Agreement and those who are not are eligible for status under the EUSS.59

An example of this is provided by the CJEU’s judgment in _CG_ (Case C-709/20) concerning a dual Croatian/Dutch national who moved to Northern Ireland in 2018.60 As an economically inactive

---

57 European Parliament, _Resolution of 15 January 2020 on implementing and monitoring the provisions on citizens’ rights in the Withdrawal Agreement_ (2020/2505(RSP)).


59 See the evidence of Kevin Foster MP, Parliamentary Under-Secretary of State, Home Office, with responsibility for the EUSS, to the House of Lords European Affairs Committee:

   ’No one has any lesser rights [in the EUSS] than they would be entitled to under the Withdrawal Agreement. The EUSS’s eligibility criteria are very different from the specific rules around the free movement regulations. That is because it is much more generous. You only have to prove residence in the United Kingdom; it is a much lower threshold than, for example, proving you were exercising your freedom of movement rights to work or study, that you had insurance in place and everything else.’

The EUSS’s lack of alignment with the Withdrawal Agreement is acknowledged by the UK government in its response to the House of Lords European Affairs Committee report on citizens’ rights, when it states:

’The Government’s position is clear, there is no detriment to EU citizens who are covered by the Withdrawal Agreement, as their EUSS status means that they can access all their Withdrawal Agreement rights. As the Committee acknowledges, the UK has been much more generous than the Withdrawal Agreement requires by including within the EUSS all EU citizens resident in the UK by the end of the transition period, regardless of whether they were here in accordance with EU law.’

60 Judgment of the Court (Grand Chamber) of 15 July 2021, _CG v The Department for Communities in Northern Ireland_, C-709/20.
person, the court found that CG did not meet the requirements of Directive 2004/38 (and hence by extension eligibility for protection under the Withdrawal Agreement) and had been treated more favourably by the UK authorities in giving her permission to legally reside in Northern Ireland by means of an award of pre-settled status under UK national law.

This lack of alignment between the Withdrawal Agreement and the EUSS raises a number of problems in that the Withdrawal Agreement:

- protects certain additional rights for eligible citizens which are not automatically afforded to those who hold settled status. Instead there is now a ‘true cohort’ and an ‘extra cohort’ who have different rights but are indistinguishable on the basis of their EUSS status.61

While Article 38 of the Withdrawal Agreement allows a host State or state of work to apply more favourable provisions to the treatment of citizens’ rights, in some instances the differences between the EUSS and the Withdrawal Agreement work to the detriment of EU citizens. This is the case of Lounes dual EU-UK nationals, who, as holders of British citizenship, are excluded from the EUSS as the means of confirming their Withdrawal Agreement rights.62 These rights include the right to be joined in the UK by certain family members. Without the means of proving these rights via the EUSS, ‘Lounes dual nationals’ may find it difficult to exercise their family reunification rights. The House of Lords European Affairs Committee in its report on citizens’ rights called on the UK Government to clarify how it intends to address this problem. In its response, the UK Government, while confirming that dual EU-UK nationality holders are prevented from applying to the EUSS, stated that family members of Lounes-type cases can apply to the EUSS as a means of claiming their family reunion rights under the Withdrawal Agreement.63

The EU has expressed its concerns regarding the compatibility of the EUSS with the Withdrawal Agreement, raising this issue at the June 2021 meeting of the Specialised Committee on Citizens’ Rights when it highlighted concerns:

- as regards the compatibility with the Withdrawal Agreement of the UK’s EU Settlement Scheme in not making a clear distinction between the beneficiaries of the Withdrawal Agreement (the so-called ‘true cohort’) and non-beneficiaries who are granted status under UK immigration law (the so-called ‘extra cohort’), despite not exercising a qualifying Treaty right.64

It repeated these concerns at the September 2021 meeting of this body.65 In its report on citizens’ rights, the House of Lords European Affairs Committee also highlighted that the misalignment between status under the EUSS and Withdrawal Agreement rights might present a risk of legal uncertainty for EU citizens if they cannot use their EUSS status to prove their rights under the Withdrawal Agreement. The report called on the Government ‘to seek a resolution via the Specialised Committee as a matter of urgency’.  

3.1.4. Implementation and monitoring

The Withdrawal Agreement provides for the establishment of Specialised Committees to oversee the implementation of specific parts of the Agreement, under the supervision of the Withdrawal Agreement.66

---

62 See Judgment of the Court (Grand Chamber) of 14 November 2017, Toufik Lounes v Secretary of State for the Home Department, C-165/16 – Lounes.
64 Joint statement following the seventh meeting of the Specialised Committee on Citizens’ Rights, 17 June 2021.
65 Joint statement following the eighth meeting of the Specialised Committee on Citizens’ Rights, 16 September 2021.
Implementation of the UK Withdrawal Agreement

Agreement Joint Committee established under Article 164 WA. The Specialised Committee on Citizens’ Rights facilitates the application of Part Two of the Withdrawal Agreement. Co-chaired by officials from the European Commission and the UK government, the Specialist Committee has met on eight occasions to date. It has published five joint reports on the implementation of residence rights by means of the issue of residence documents under Article 18 WA, two during the transition period and the remainder in 2021.66

In addition to the implementation and oversight roles provided for the EU and UK by the Specialised Committee, under Article 4 WA, the rights provided by the citizens’ rights section of the Withdrawal Agreement have direct effect and can be relied on directly by EU citizens in UK courts and by UK nationals in the courts of the EU Member States. Article 4 WA also requires the UK to ensure the primacy of the Withdrawal Agreement by disaplying inconsistent or incompatible domestic provisions. It should be noted however that Section 38 of the 2020 EU (Withdrawal Agreement) Act, the legislation that implements the Withdrawal Agreement in UK national law, provides for the principle of parliamentary sovereignty.67 Section 38(2) states that: ‘nothing in this Act derogates from the sovereignty of the Parliament of the United Kingdom’, notwithstanding the principles of direct effect and primacy provided for in the Withdrawal Agreement and elsewhere in that act. The act also confers extensive executive powers to make secondary legislation in relation to citizens’ rights. Professor Michael Dougan, in his legal analysis of the UK’s withdrawal from the EU, has pointed out that the combination of these two elements leads to a situation whereby it remains possible that:

>a future regime with a sufficient Commons majority will decide – whether consciously or inadvertently – to deviate from or even repudiate the UK’s obligations under the Withdrawal Agreement (in general) and those contained in Part Two (in particular).68

Other academic commentators have pointed to the risks involved in relying on the effectiveness of the principles of direct effect and primacy in the Withdrawal Agreement as means of protecting EU citizens’ rights in the context of a country that is no longer an EU Member State.69

The Withdrawal Agreement provides a role for the Court of Justice, with Article 158 WA permitting UK courts to ask for preliminary rulings from the Court of Justice on the interpretation of the citizens’ rights section of the Withdrawal Agreement for eight years after the end of the transition period. For questions relating to the application of UK settled status, that eight-year period starts on the day of the UK’s withdrawal from the EU. The first preliminary reference procedure exercised by a UK court was made during the transition period, when EU law still applied to the UK, and the CJEU gave its response in its judgment on CG, (Case C-709/20).70

The implementation and application of UK citizens’ rights in the EU are monitored by the European Commission and those of EU citizens in the UK by an independent national authority, in accordance with Article 159 WA (and as given effect by national law in the UK, by means of the EU (Withdrawal Agreement) Act 2020.71 The Independent Monitoring Authority (IMA) began its work on

---

66 See the joint reports on the implementation of residence rights.
67 European Union (Withdrawal Agreement) Act 2020, Section 38.
70 Judgment of the Court (Grand Chamber) of 15 July 2021, CG v The Department for Communities in Northern Ireland, C-709/20.
1 January 2021. It receives complaints and conducts inquiries regarding alleged breaches of the Withdrawal Agreement by UK or Gibraltar public authorities. It can also take legal action in the UK and Gibraltar if it deems that Part Two of the Agreement is not being implemented correctly. It should be noted that while the IMA receives complaints from individuals it does not seek to resolve them as its focus is on systemic failings in the implementation or application of Part Two of the Withdrawal Agreement; EU citizens with such complaints must seek individual redress by other means.72

On 15 October 2021, the IMA issued a ‘pre-action protocol letter’ to the UK Home Office, setting out the IMA’s concerns that the automatic loss of residence status for EU and EEA citizens who do not apply in time to upgrade from pre-settled status to settled status would be a breach of the Withdrawal Agreement and the EEA EFTA Separation Agreement.73 The pre-action protocol letter served to escalate a previously inconclusive engagement with the Home Office on this issue to the pre-action stage of litigation. On 14 December 2021, the IMA issued judicial review proceedings against the Home Office, as it considers that the Home Office position that citizens who fail to apply for settled status before the expiry of their pre-settled status automatically lose their rights, is in breach of the Withdrawal Agreement, as well as relevant CJEU case law.74

The IMA has also engaged with the UK public authorities that precluded EU citizens who had applied to the EUSS within the deadline but were awaiting a decision on their status vis-à-vis access to free childcare and public housing.75

3.1.5. Rights of UK citizens under the Withdrawal Agreement

The Commission reports that, based on Member State estimates, there are more than 1 060 000 UK nationals residing in the EU (mostly in Spain, France, Ireland, Germany and the Netherlands).76 Article 18 WA provides host States with a choice as to how to give effect to the right of residence of citizens falling within the scope of the Agreement. Under Article 18(1) WA, the host State may require the citizen to apply to access their rights under the Agreement (a constitutive system), whereas Article 18(4) WA allows the host State to confer the right of legal residence on those in scope of the agreement, without the need to apply for it, though the citizens have the right to receive a residence document to confirm their status. This is termed a declaratory system. Fourteen Member States have chosen to operate a declaratory residence scheme, with the remainder operating a constitutive residency scheme. Article 18(1)(b) WA provides a minimum six months’ grace period up to 30 June 2021 during which EU and UK citizens living in countries operating a constitutive system retain their residency rights and can apply for a new residence status in their host State. Member States have chosen various dates for receipt of applications from UK nationals to access their status under the Withdrawal Agreement, of which the latest is 31 December 2021 (See Table 5 below for the Member States’ deadlines). Based on estimates provided by the UK’s Foreign, Commonwealth

---

72   See IMA website.
74   For details of the case see the IMA’s statement of grounds in the Queen on the application of the Independent Monitoring Authority for the Citizens’ Rights Agreements and Secretary of State for the Home Department.
75   Amended Childcare Offer Legislation Welcomed by IMA; IMA reaches second early case resolution with local authority over EU citizens’ housing access.
76   See European Commission webpage on citizens’ rights under the Withdrawal Agreement.
and Development Office, approximately 68% of UK citizens in the EU reside in Member States with a declaratory system, while the remaining 32% are resident in those with a constitutive system.\textsuperscript{77}

From the data on applications by UK nationals for a new residence status under the Withdrawal Agreement, it appears that there remain a significant number yet to apply. Of the estimated 293,900 UK nationals resident in Member States operating a constitutive system, 36,700 had yet to apply by 10 September 2021, while in the Member States operating a declaratory system, of the 754,700 UK nationals and their family members eligible to apply, 509,500 had still not applied by that date. This may not be surprising since UK nationals living in states operating a declaratory system do not need to apply to access their rights under the Withdrawal Agreement and many states operating a constitutive system have deadlines extending up to 31 December 2021. It is also possible that in order to regain the rights they had enjoyed as EU citizens, many UK nationals have acquired the citizenship of their host State, or alternatively have availed of generous citizenship rules offered by some Member States.\textsuperscript{78} Nevertheless in evidence submitted to the UK House of Lords, groups representing UK nationals living in the EU have expressed concerns about failure by EU Member States, in both constitutive and declaratory systems, to engage in awareness-raising exercises aimed at UK nationals resident in their territory, in contravention of their obligations under Article 37 WA.\textsuperscript{79}

While the Withdrawal Agreement provides eligible UK citizens and their families with the right to live and work in their host State, their rights under the Agreement are more limited than those that they enjoyed under free movement prior to the UK’s exit from the EU. Most noteworthy is the fact that the Withdrawal Agreement does not provide UK nationals with onward free movement rights, meaning that their right of residence, or the right to conduct an economic activity under the Withdrawal Agreement, is limited to their host State. This is due to the Commission’s stance that the matter fell beyond the scope of its negotiating mandate under Article 50 TEU, with the Council failing to extend the Commission’s mandate to include this issue. The European Parliament however made repeated calls for the EU to be more generous in its treatment of the UK citizens falling within the scope of the agreement.\textsuperscript{80} The Withdrawal Agreement’s residency rights in the host State have thus created what commentators have called ‘a gilded cage’, where UK citizens cannot claim any free movement rights in other Member States, unless they comply with EU legal migration legislation applicable to third-country nationals. In its resolution of 15 January 2020 on...
implementing and monitoring the provisions on citizens’ rights in the Withdrawal Agreement, the European Parliament demanded that ‘future free movement rights across the whole EU for UK citizens covered by the Withdrawal Agreement be guaranteed’.81 The UK House of Lords European Affairs Committee also called on the UK government to raise the issue with the EU through the institutional arrangements provided by the Withdrawal Agreement or the Trade and Cooperation Agreement (TCA).82 In its response, the UK government stated that it was ‘not seeking to reopen negotiations with the EU on this matter’ but would ‘always listen to proposals that will benefit British citizens’, and noted the ‘existing EU routes available to third-country nationals under the Long-Term Residence Directive and the EU Blue Card’.83

Similarly, with regard to the recognition of professional qualifications, the Withdrawal Agreement provisions are limited in scope, both geographically and temporally. They apply only to the host State of the UK citizen or, in the case of a frontier worker, their state of work, rather than on an EU-wide basis, acting as an obstacle to any attempt to work in other EU Member States. The Withdrawal Agreement does not permit UK nationals to rely on EU law to obtain recognition of additional professional qualifications after the end of the transition period, in the host State, state of work or in any other EU Member State. Similarly, the agreement does not deal with professional qualifications obtained in the UK or in the EU before the end of the transition period but not recognised, or not in the course of being recognised by the other side before the end of the transition period.

The TCA, which governs the future relationship between the EU and the UK, has some limited provisions regarding recognition of qualifications (see Article 158 and Annex 24). However rather than the recognition of qualifications, these provide for the negotiation of recommendations for mutual recognition agreements on a profession-by-profession basis that must then be submitted to the Partnership Council established under the TCA for its approval.

The Specialised Committee on Citizens’ Rights facilitates application of Part Two of the Withdrawal Agreement. The European Commission is responsible for overseeing the implementation of the Withdrawal Agreement by EU Member States. In the joint statement issued following the eighth meeting of the Specialised Committee on Citizens’ Rights in September 2021, the UK raised concerns regarding alleged misapplication of the Withdrawal Agreement in several Member States.84

These related to difficulties experienced by UK citizens accessing benefits and services, with reference to examples of discrimination on the grounds of nationality. The UK also stated that alleged non-compliant administrative procedures by some Member States have caused difficulties for UK citizens when applying for a new residence status or document, preventing them from accessing their rights under the Withdrawal Agreement. The UK also called upon the EU to address failures in the implementation of the safeguards and appeal rights set out in the Withdrawal Agreement. The UK further asked for assurances over the implementation of late applications policies for UK nationals.

---

81 European Parliament, Resolution of 15 January 2020 on implementing and monitoring the provisions on citizens’ rights in the Withdrawal Agreement (2020/2505(RSP)).
82 House of Lords European Affairs Committee, Citizens’ Rights, 1st Report of Session 2021-22, HL Paper 46, July 2021. See also the Trade and Cooperation Agreement.
84 Joint statement following the eighth meeting of the Specialised Committee on Citizens’ Rights, 16 September 2021.
Table 3 – Applications from UK and EU citizens for a new residence status in states operating a constitutive system

<table>
<thead>
<tr>
<th>Host state</th>
<th>Estimated number of UK or EU residents (as applicable)</th>
<th>Total number of applications received</th>
<th>Total number of applications concluded</th>
<th>Report date</th>
<th>Deadline for receipt of applications</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>293,900</td>
<td>257,200</td>
<td>232,100</td>
<td>10 September 2021</td>
<td></td>
</tr>
<tr>
<td>Austria</td>
<td>11,500</td>
<td>6,400</td>
<td>5,200</td>
<td>30 June 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>Belgium</td>
<td>18,600</td>
<td>6,800</td>
<td>5,200</td>
<td>27 August 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>Denmark</td>
<td>19,000</td>
<td>10,900</td>
<td>7,100</td>
<td>23 August 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>Finland</td>
<td>5,000</td>
<td>4,000</td>
<td>2,400</td>
<td>9 September 2021</td>
<td>30.09.2021</td>
</tr>
<tr>
<td>France</td>
<td>148,300</td>
<td>162,100</td>
<td>151,300</td>
<td>6 September 2021</td>
<td>30.06.2021</td>
</tr>
<tr>
<td>Hungary</td>
<td>5,500</td>
<td>1,100</td>
<td>800</td>
<td>31 July 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>Latvia</td>
<td>1,200</td>
<td>800</td>
<td>800</td>
<td>31 August 2021</td>
<td>30.06.2021</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>5,300</td>
<td>4,400</td>
<td>3,800</td>
<td>1 September 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>Malta</td>
<td>13,600</td>
<td>10,000</td>
<td>8,300</td>
<td>10 September 2021</td>
<td>30.06.2021</td>
</tr>
<tr>
<td>Netherlands</td>
<td>45,000</td>
<td>38,700</td>
<td>38,400</td>
<td>31 August 2021</td>
<td>30.09.2021</td>
</tr>
<tr>
<td>Romania</td>
<td>3,000</td>
<td>900</td>
<td>800</td>
<td>31 August 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>Slovenia</td>
<td>900</td>
<td>322</td>
<td>272</td>
<td>31 August 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>Sweden</td>
<td>17,000</td>
<td>10,800</td>
<td>7,700</td>
<td>9 September 2021</td>
<td>31.12.2021</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>3,500,000-4,100,000</td>
<td>6,159,800</td>
<td>5,709,200</td>
<td>16 September 2021</td>
<td>30.06.2021</td>
</tr>
</tbody>
</table>

Source: Specialised Committee on Citizens' Rights, Fifth Joint Report on the implementation of residence rights under Part Two of the Withdrawal Agreement, Table 2 and information from the text.
Table 4 – Applications by UK citizens for a new residence status in Member States operating a declarative system

<table>
<thead>
<tr>
<th>Host state</th>
<th>Estimated number of UK residents</th>
<th>Total number of applications received</th>
<th>Total number of applications concluded</th>
<th>Report date</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>754 700</td>
<td>245 200</td>
<td>208 100</td>
<td>9 September 2021</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>11 000</td>
<td>9 400</td>
<td>9 400</td>
<td>30 August 2021</td>
</tr>
<tr>
<td>Czechia</td>
<td>9 500</td>
<td>2 100</td>
<td>1 800</td>
<td>31 July 2021</td>
</tr>
<tr>
<td>Germany</td>
<td>85 400</td>
<td>No data available</td>
<td>25 000</td>
<td>31 July 2021</td>
</tr>
<tr>
<td>Estonia</td>
<td>1 500</td>
<td>400</td>
<td>354</td>
<td>31 August 2021</td>
</tr>
<tr>
<td>Ireland</td>
<td>115 000</td>
<td>87</td>
<td>87</td>
<td>30 April 2021</td>
</tr>
<tr>
<td>Greece</td>
<td>34 000</td>
<td>14 600</td>
<td>14 300</td>
<td>8 September 2021</td>
</tr>
<tr>
<td>Spain</td>
<td>381 400</td>
<td>168 700</td>
<td>141 700</td>
<td>2 September 2021</td>
</tr>
<tr>
<td>Croatia</td>
<td>1 100</td>
<td>700</td>
<td>700</td>
<td>31 August 2021</td>
</tr>
<tr>
<td>Italy</td>
<td>32 800</td>
<td>11 000</td>
<td>9 700</td>
<td>9 September 2021</td>
</tr>
<tr>
<td>Cyprus</td>
<td>38 500</td>
<td>2 100</td>
<td>1 400</td>
<td>6 September 2021</td>
</tr>
<tr>
<td>Lithuania</td>
<td>700</td>
<td>190</td>
<td>172</td>
<td>3 September 2021</td>
</tr>
<tr>
<td>Poland</td>
<td>6 500</td>
<td>2 900</td>
<td>2 200</td>
<td>6 September 2021</td>
</tr>
<tr>
<td>Portugal</td>
<td>34 500</td>
<td>31 700</td>
<td>No data available</td>
<td>29 August 2021</td>
</tr>
<tr>
<td>Slovakia</td>
<td>2 800</td>
<td>1 300</td>
<td>1 300</td>
<td>24 August 2021</td>
</tr>
</tbody>
</table>

Source: Specialised Committee on Citizens’ Rights, Fifth Joint Report on the implementation of residence rights under Part Two of the Withdrawal Agreement, Annex B, Table 2.

85 Including third-country family members.
86 For countries operating declaratory systems, since no application is required to formalise Withdrawal Agreement rights, there is no deadline for receipt of applications. For more information about the implementation of national residence schemes for eligible UK citizens see the Commission website.
87 UK nationals only.
88 Updated numbers from the implementing authorities in the federal states (Land) are expected by the end of 2021.
89 The Irish number is low because of the Common Travel Area (CTA) arrangements, which give generous rights to UK citizens resident in Ireland, as well as to Irish citizens resident in the UK. Neither Irish citizens in the UK nor British citizens in Ireland are required to take any action to protect the status and rights associated with the CTA, hence the low number of applicants for Withdrawal Agreement status by UK citizens resident in Ireland. The CTA does not provide any mechanism for family reunification with third-country national family members, unlike the Withdrawal Agreement, and the UK applications for Withdrawal Agreement status in Ireland may be motivated by a desire to access those additional Withdrawal Agreement rights.
90 All figures in these tables have been reported by EU Member States and the UK and are provisional, subject to change and dated according to each national system. For the UK, the ‘Total’ includes data since testing of the EUSS began and figures include applications from EEA, EFTA and Swiss nationals and their family members who are eligible to apply to the EUSS. Further breakdowns by nationality are available on the UK Government EUSS website. As figures are rounded to the nearest 100, table breakdowns may not match overall totals, unless the figure is lower than 500.
As to the outcome of the applications received from UK nationals for registration of their rights under the Withdrawal Agreement, among the constitutive states four of the thirteen have not yet provided complete data so detailed analysis is not possible at this moment. However, it is clear from the data available that applicants were overwhelmingly awarded permanent residence under Article 15 of the Withdrawal Agreement or non-permanent residence under Article 13, with very few applications refused, withdrawn or void.

Table 5 – Outcomes of applications for a new residence status in constitutive systems, by host state

<table>
<thead>
<tr>
<th>Host state</th>
<th>Permanent residence (Article 15)</th>
<th>Non-permanent residence (Article 13)</th>
<th>Refused</th>
<th>Withdrewn or void</th>
<th>Incomplete</th>
<th>Report date</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>136 400</td>
<td>79 900</td>
<td>3 300</td>
<td>7 900</td>
<td>6 500</td>
<td>10 September 2021</td>
</tr>
<tr>
<td>Austria</td>
<td>3 200</td>
<td>2 000</td>
<td>No data available</td>
<td>No data available</td>
<td>No data available</td>
<td>30 June 2021</td>
</tr>
<tr>
<td>Belgium</td>
<td>2 300</td>
<td>2 500</td>
<td>75</td>
<td>No data available</td>
<td>No data available</td>
<td>31 August 2021</td>
</tr>
<tr>
<td>Denmark</td>
<td>5 700</td>
<td>1 200</td>
<td>135</td>
<td>Incomplete outcomes included in Withdrawn or Void</td>
<td>32</td>
<td>23 August 2021</td>
</tr>
<tr>
<td>Finland</td>
<td>1 300</td>
<td>1 100</td>
<td>7</td>
<td>35</td>
<td>0</td>
<td>9 September 2021</td>
</tr>
<tr>
<td>France</td>
<td>97 000</td>
<td>40 800</td>
<td>2 200(^{91})</td>
<td>7 100</td>
<td>4 300</td>
<td>6 September 2021</td>
</tr>
<tr>
<td>Hungary</td>
<td>800</td>
<td>0</td>
<td>2</td>
<td>29</td>
<td>332</td>
<td>31 July 2021</td>
</tr>
<tr>
<td>Latvia</td>
<td>191</td>
<td>488</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>31 August 2021</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>1 900</td>
<td>1 900</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1 September 2021</td>
</tr>
<tr>
<td>Malta</td>
<td>600</td>
<td>7 700</td>
<td>0</td>
<td>0</td>
<td>1 700</td>
<td>10 September 2021</td>
</tr>
<tr>
<td>Netherlands</td>
<td>22 200</td>
<td>15 600</td>
<td>250</td>
<td>388</td>
<td>No data available</td>
<td>31 August 2021</td>
</tr>
<tr>
<td>Romania</td>
<td>295</td>
<td>500</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>31 August 2021</td>
</tr>
<tr>
<td>Slovenia</td>
<td>120</td>
<td>138</td>
<td>2</td>
<td>12</td>
<td>50</td>
<td>31 August 2021</td>
</tr>
<tr>
<td>Sweden</td>
<td>800</td>
<td>6 000</td>
<td>600</td>
<td>286</td>
<td>80</td>
<td>9 September 2021</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2 974 100</td>
<td>2 411 100</td>
<td>145 200</td>
<td>94 300</td>
<td>84 300</td>
<td>30 June 2021</td>
</tr>
</tbody>
</table>

\(^{91}\) These figures do not systematically reflect the number of applications refused and include duplicates (cases where the same application was submitted more than once).
4. The Northern Ireland Protocol

4.1. The Protocol and the Good Friday / Belfast Agreement

The Protocol on Ireland/Northern Ireland (henceforth, the Protocol) came as a compromise solution to safeguard the Good Friday/Belfast Agreement (GFBA), which was signed in 1998 and entered into force in 1999. The GFBA brought peace to Northern Ireland and preserving it in the new context was acknowledged to be a major hurdle by the parties negotiating the Withdrawal Agreement. Indeed, the GFBA was designed in a context in which both Ireland and the UK were part of the EU, and relied on that, in particular in its cross-border dimensions.

The GFBA contains three strands, namely the 'Democratic Institutions in Northern Ireland', the 'North/South Ministerial Council', and the British-Irish Council. In its institutional dimensions, the main provisions of the GFBA were to establish:

- the Northern Ireland Assembly (NIA) in which both communities – unionists and nationalists – in Northern Ireland must be represented;
- the Northern Ireland Executive (NIE), appointed by the NIA, and made up by the First Minister, deputy First Minister, and eight departmental ministers. The First Minister and deputy First Minister are nominated respectively by the largest parties of the largest and second largest political designations in the NIA;
- the North/South Ministerial Council (NSMC), composed of delegates of the Northern Ireland Executive and the Irish Government, who meet regularly to cooperate on policy areas across the island;
- the British–Irish Council (BIC), which provides a forum for consultation and cooperation, and is composed of representatives from the governments of Ireland, the UK, Scotland, Wales, of the Northern Ireland Executive, as well as the governments of the Isle of Man, Jersey and Guernsey.

The Protocol is motivated by a commitment to protect 'North-South' cooperation on the island of Ireland, as enshrined in the GFBA. To this end, it prevents the establishment of physical infrastructure or related checks and controls (i.e. a 'hard border') on the island, and Northern Irish goods retain frictionless access to the EU single market. However, in order to protect the EU single market access to the EU single market is guaranteed by Article 5(5) Protocol which prohibits customs duties (application of articles 30 and 110 TFEU to and in the UK in respect of Northern Ireland) and quantitative restrictions on exports and imports between the EU and Northern Ireland.

---

92 The text of the GFBA is available on the UK Government site. The British-Irish Agreement between the Republic of Ireland and the UK guarantees the application of the GFBA by the Republic of Ireland and the UK.
93 The GFBA was signed by Unionist and Nationalist political parties in Northern Ireland, not by the Democratic Unionist Party (DUP), currently the largest party in Northern Ireland Assembly. The United States is perceived as a decisive broker and sponsor of the deal. The EU is indirectly involved in the GFBA, which was reliant on the common legal frame of the parties. Moreover, in its guiding principles for the Dialogue on Ireland/Northern Ireland (2017), the European Commission reiterated that it supports peace, stability and reconciliation on the island of Ireland brought by the GFBA.
94 In their study for the European Parliament AFCO Committee (2017), Profs Phinnemore and Hayward provide further details and emphasise that it is 'vitally important' to note that the GFBA is 'premised on a definition of the Northern Ireland conflict as being a border conflict' which the GFBA manages through multilevel governance.
95 Northern Ireland Assembly website.
96 Northern Ireland Executive website.
97 North South Ministerial Council website.
98 British–Irish Council website.
99 Access to the EU single market is guaranteed by Article 5(5) Protocol which prohibits customs duties (application of articles 30 and 110 TFEU to and in the UK in respect of Northern Ireland) and quantitative restrictions on exports and imports between the EU and Northern Ireland.
Implementation of the UK Withdrawal Agreement

market, the Protocol provides for the application of relevant EU law and standards to the UK in relation to Northern Ireland, and border controls must be implemented between Northern Ireland and the rest of the UK (for simplicity, Great Britain) by UK authorities according to EU law. The Protocol however reaffirms that 'Northern Ireland is part of the customs territory of the UK' and protects the UK internal market, so that no customs duties shall be payable for a good brought into Northern Ireland from another part of the UK unless that good is at risk of subsequently being moved into the EU.

Box 1 – Composition of the Northern Ireland Assembly (NIA)
The NIA is made up of 90 Members of the Legislative Assembly (MLAs), each of whom identifies as ‘Unionist’, ‘Nationalist’ or ‘Other’. The NIA education site defines Nationalists as ‘people who want Northern Ireland to join the Republic of Ireland’ and Unionists as ‘people who want Northern Ireland to remain part of the UK’. The last elections took place in 2017 and the next elections are due by May 2022.

The current composition of the NIA is as follows.
- Unionists (39 seats): Democratic Unionist Party DUP (28), Ulster Unionist Party UUP (10), Traditional Unionist Party TUP (1);
- Nationalists (39 seats): Sinn Féin (27), Social Democratic and Labour Party SDLP (12);
- Others (12 seats): Alliance Party (8), Green Party (2), Independents (1), People Before Profit Alliance (1).

In its institutional framework, the WA establishes the Specialised Committee on the Protocol on Ireland/Northern Ireland (the Specialised Committee) whose first meeting took place on 30 April 2020. Its role is to facilitate the implementation and application of the Protocol and make recommendations as regards the functioning of the Protocol to the Joint Committee for the Withdrawal Agreement (the Joint Committee) (Article 164 WA) responsible for overseeing the implementation of the Withdrawal Agreement as a whole. The Specialised Committee is co-chaired by the EU and the UK and supports the Joint Committee by focusing on details of the Protocol. The Protocol establishes the Joint Consultative Working Group on the implementation of the Protocol (JCWG), which works as a ‘forum for the exchange of information and mutual consultation’. The Protocol also provides for a ‘consent mechanism’ whereby the NIA can withdraw consent to the application in Northern Ireland of EU law set out in Protocol Articles 5 to 10 within four years following the end of the transition period, to be repeated after four or eight years depending on the results of the vote.

---

100 Protocol Article 4 (Customs territory of the United Kingdom) and Article 6 (Protection of the UK internal market).
101 Protocol Article 5(1) (Customs, movement of goods). Paragraph 5(2) specifies that the Joint Committee shall establish whether a good is not at risk of being moved into the EU. The decision shall take into consideration, among others, the final destination and use of the good, the nature and value of the good, the nature of the movement, the incentive for undeclared onward-movement into the EU. In taking any decision, the Joint Committee shall consider the specific circumstances in Northern Ireland.
102 The Commission’s statements following the meetings of the Joint Committee and the Specialised Committees under the Withdrawal Agreement are available online.
103 Protocol Article 15.
104 Protocol Article 18. As the transition period ended on 31 December 2020, the first consent vote should take place in December 2024 at the latest. Protocol Article 18 establishes that, in any period, where consent is reached by a majority of Members of the Legislative Assembly (MLAs), present and voting, the subsequent period shall last four years. Where the decision has ‘cross-community support’, the subsequent period shall last eight years. ‘Cross-community support’ is reached where continuation is voted by either: (a) a majority of the MLA, present and voting, including a majority of the unionist and nationalist designations present and voting; or, (b) 60 % of the MLA, present and voting, including at least 40 % of each of the nationalist and unionist designations present and voting.
4.2. Issues raised by the UK government

In September 2020, the UK government tabled the Internal Market Bill, which would give powers to UK ministers to dis-apply parts of the Protocol, threatening the implementation of the Protocol for the first time. The EU reacted by launching legal action against the UK, while also engaging in discussions. Temporary solutions were found in December 2020; these comprised grace periods in some sectors to the extent that the standards remained aligned. In June 2021, the UK government announced its intention to extend the grace periods unilaterally. In a statement made after the meeting of the Joint Committee on 9 June 2021, the UK provided its own assessment of the areas of concern in which progress in discussions was lacking. On 21 July 2021, shortly after the extension of the new grace period was agreed, the UK government detailed its proposed approach on the Protocol in the command paper 'Northern Ireland Protocol: The way forward'. On 6 September 2021, Lord Frost, the UK co-chair of the Joint Committee at the time, announced that 'to provide space for potential further discussions, and to give certainty and stability to businesses while any such discussions proceed', the UK Government will continue to 'operate the Protocol on the current basis', which 'includes the grace periods and easements currently in force'.

The command paper (CP) highlights three areas for renegotiation. Trade in goods between Northern Ireland and Great Britain is the first and longest section of the proposed solutions, and concerns customs, sanitary and phytosanitary standards (SPS), value added tax (VAT) and excise, enforcement, and unfettered access. The CP argues that due to the burdens of paperwork, the Protocol principle that Northern Ireland is fully part of the 'UK's customs territory' does not apply in practice because of the concept of 'at risk'. To this end, the UK suggests making arrangements under which it would be 'the primary responsibility of any UK trader' to 'declare' the final destination. These arrangements would rely on a 'light-touch scheme' where traders would agree on complete transparency of their supply chains and openness of shipments to control or checks on 'risk-based and intelligence-led basis'.

For agro-food products, a similar scheme, using risk-based and intelligence-led controls would be arranged, without certification and checks for products intended for Northern Ireland. In the new scheme, live animal movements would broadly maintain the arrangements of pre-notification, health documentation and 100% checks. Plants with biosecurity risks would be controlled under an 'appropriate regime'. Finally, pets complying with UK legal requirements of microchipping for dogs should be able to move freely between Great Britain and Northern Ireland.

The CP also addresses the access of goods from Northern Ireland to Great Britain for which the EU and the UK already agreed in December 2020 that exit declarations would not be required except in specific instances, e.g. endangered species within the CITES system, because other sources could provide equivalent information. Nevertheless, this arrangement was agreed on the basis that other data sources could provide equivalent information and according to the UK government, the model

---

105 EPRS Briefing UK Internal Market Bill and the Withdrawal Agreement, November 2021.
106 UK statement on the meeting of the Withdrawal Agreement Joint Committee, 9 June 2021.
107 EPRS briefing EU-UK relations: Difficulties in implementing the Northern Ireland Protocol provides an overview.
109 On 19 December 2021, the UK Prime Minister, Boris Johnson, appointed Elizabeth Truss, Foreign Secretary, to replace Lord Frost following his resignation.
110 Written statement made on 6 September 2021.
111 Paragraphs 47 and 48 (customs) 49 to 53 (SPS), 54 (VAT and excise), 55 (enforcement), and 56 and 57 (unfettered access).
is not ‘operable without putting in place burdensome new requirements to collect information’. The UK proposes to eliminate the new arrangement, and the goods would be subject to further processing if they were re-exported from the UK.

The second section concerns the circulation of goods within Northern Ireland and deals with the alignment of standards of manufactured products between the EU and Northern Ireland, making the point that this is causing difficulties with regard to the placing of goods from Great Britain on the Northern Ireland market. The CP suggests that the dual-regulatory regime should be applicable to all goods in Northern Ireland and circulated within Northern Ireland if they meet ‘either EU or UK rules’ and should be labelled accordingly. Regarding medicines, because their delivery is closely linked to national health services and given the complexity of any new arrangements, medicines could be removed from the Protocol altogether. In addition, the CP argues that the EU-UK Trade and Cooperation Agreement\(^\text{112}\) (TCA) provides a sufficient framework for State aid, and subsidy control in the Protocol should be aligned to it and EU law removed.\(^\text{113}\)

Finally, the third area for renegotiation concerns the governance of the Protocol. In particular, UK Government questions the application of the jurisdiction of the Court of Justice of the EU (CJEU) in Protocol Article 12(4) and 12(7),\(^\text{114}\) and suggests the application of the international arbitration principles of dispute settlement (CP paragraph 41).\(^\text{115}\)

4.3. Solutions proposed by the European Commission

On 6 September 2021, the European Commission ‘took note’ of the UK government decision to unilaterally extend grace periods, but did not launch any new legal action ‘for now’. Instead, Commission Vice-President Maroš Šefčovič visited Belfast and engaged face-to-face with business, civil society and political representatives.\(^\text{116}\) Following these discussions, on 13 October 2021 the Commission published its proposed bespoke arrangements to benefit Northern Ireland, covering four areas and detailed in non-papers.\(^\text{117}\)

4.3.1. Engagement with Northern Ireland stakeholders and leaders

A first series of measures would enhance transparency as well as the participation of Northern Ireland stakeholders. The non-paper notes that Northern Ireland authorities are already active participants in the Joint Committee and acknowledges the importance of the JCWG as a platform for information sharing, consultation and exchanges with Northern Ireland authorities. It states that the Commission is committed to enhancing this communication tool. For instance, structured groups of experts from respective authorities could discuss aspects of EU measures of importance for the implementation of the Protocol. The Specialised Committee could be further involved as a forum for dialogue, and structured dialogues could be set up on a regular basis between the co-


\(^\text{113}\) As stated in Protocol Article 10.

\(^\text{114}\) Protocol Article 12(4) and 12(7).

\(^\text{115}\) Command Paper para. 41. Under Article 12(4) of the Protocol the institutions, bodies, offices, and agencies of the EU have the powers as regards Article 5 (customs, movement of goods), 7 (Technical regulations, assessments, certifications, approvals and authorisations), 8 (VAT and excise), 9 (single electricity market) and 10 (state aid). In particular, the CJEU shall have the jurisdiction provided for in the Treaties in this respect. It also states that the second and third paragraphs of Article 267 TFEU which refer to the CJEU will apply to and in the UK in this respect.

\(^\text{116}\) Statement of the Commission of 6 September 2021 following the UK announcement and speaking points in Belfast 10 September 2021.

\(^\text{117}\) On 13 October 2021, the Commission published the bespoke arrangements and the non-papers Engagement with Northern Ireland stakeholders and leaders, Sanitary and Phytosanitary (SPS) issues, Customs, Medicines.
chairs of the Joint Committee and representatives of business communities and of civil society organisations in Northern Ireland, thereby going beyond the exchanges already taking place.

Transparency should also be enhanced by means of the website the Commission is setting up to show the EU legislation applicable in Northern Ireland. This could be used for public consultations with Northern Ireland stakeholders. Confidentiality of the JCWG could also be lifted for deliberations on specific legislative proposals, especially those with experts. The co-chairs of the JCWG could also decide to publish the summary of the minutes (including any explanations on specific measures).

The EU-UK Parliamentary Partnership Assembly (PPA) established under the EU-UK TCA could also play a role by strengthening contacts between the EU-UK PPA and the NIA. The PPA could assess options for the creation of a Northern Ireland sub-structure.

4.3.2. Customs

According to the non-paper on this issue, the Commission is ready to reconsider the criteria applicable for the scheme for ‘goods not at risk’ of being subsequently moved into the EU so as to increase its scope. The criteria could consider the status of the sender and recipient of the goods, e.g. business or consumer, the business activity of the parties involved (e.g. retailers, wholesalers, manufacturing industry), the nature of the goods (e.g. intermediate goods or consumer goods), the value of the goods, the nature of the consignment (e.g. parcels), and the record of compliance with customs and taxation requirements of the business involved.

Furthermore, additional facilitation measures with regard to customs formalities and processes could be put in place for ‘goods not at risk’. The non-paper does not provide any details, but the new rules and supervision should be robust enough to guarantee that goods moved to Northern Ireland would not be moved subsequently to the EU. EU representatives and relevant market surveillance authorities should play an active role in monitoring the scheme.

The revised scheme on the implementation of indirect tax rules (value added tax (VAT) and excise duties), the operation of market surveillance in respect of products made available on the Northern Ireland market and EU quotas could also be reconsidered. However, the revised scheme should guarantee that EU quotas cannot be circumvented and goods could not be consumed in Northern Ireland free of VAT and excise duties. The new scheme would include structural safeguards envisaging review and termination clauses.

4.3.3. Sanitary and phytosanitary (SPS) measures

Practical solutions in the SPS domain consist mainly of rules that would simplify certification for retail goods. For instance, official certificates could allow for global statements that all goods transported by the same lorry meet the requirements of EU legislation, with detailed documentation for each product available electronically for inspection, unless the consignment includes products subject to prohibitions or restrictions.

The frequency of identity and physical checks to be performed could also be reduced and the level of checks would be managed as part of an overall system, which would define the risk management principles and related decisions. However, if the solution involves products subject to prohibitions and restrictions, basic production requirements in Great Britain would need to remain aligned with those in the EU. Clear labelling solutions are also proposed. The facilitations should only be

---

Implementation of the UK Withdrawal Agreement

applicable to end products produced from primary products originating in the UK in accordance with the EU-UK TCA or coming from the EU.

The monitoring of the supply chain would be reinforced by implementing facilitations for authorised traders and establishments with special point-to-point monitoring. Solutions should remain subject to a review clause and a rapid reaction mechanism regarding individual products or traders.119 This would require an interface between the respective EU and UK SPS databases; the respective IT teams are already in contact. The resulting ‘e-certification’ is expected to increase the speed of handling entry and exit data for SPS goods and documentary checks.

However, these solutions would abolish neither certification nor all of the SPS checks. Further, as a pre-requisite, the Commission demands access to the relevant UK IT customs systems and the completion of the construction and effective staffing of permanent border control posts. Any tabled solution should also envisage risk assessment and be motivated by fact-based evidence that alterations in the supply chains are caused by the Protocol.

Box 2 – Changes in EU regulation, already in force or in preparation

The SPS non-paper mentions a series of EU implementing regulations and amendments to regulations that have already been adopted or are in preparation in relation to the movement of live animals:

- Implementing Regulation 2021/1064 (28 June 2021) enables the identification of NI animals and removes the need to re-tag when animals move multiple times between Great Britain and NI;
- Implementing Regulation 2021/1469 (10 September 2021) allows the re-exporting of EU-origin animal products to the EU and NI that are moved to Great Britain for storage;
- the amendment of Regulation No 142/2011 (26 October 2021) simplifies the certification import requirements on animals slaughtered in Great Britain and reduces the residency period for animals brought into Great Britain from NI, the EU or other third countries before they can be slaughtered;
- Delegated Regulation 2021/899 (3 June 2021) amending Regulation (EU) No 142/2011 for EU import requirements on animal by-products to authorise Ireland and Northern Ireland to export meat-and-bone meal to Great Britain for combustion;
- the amendment of Delegated Regulation (EU) 2020/692 for import requirements in order to avoid a 30-day quarantine for racing pigeons brought into the EU or NI from Great Britain. The Member States can use the transition period offered through the new Animal Health Law to continue accepting entries without quarantine;
- acts in preparation will facilitate returns to NI of livestock from fairs in Great Britain, and address the risk control of scrapie among sheep and goats to facilitate movements.

4.3.4. Medicines

Regarding medicines, a permanent derogation from the relevant provisions of the framework directive for medicinal products for human use is proposed so that regulatory compliance functions for medicines supplied to the Northern Ireland market (only) may be located in Great Britain, and manufacturing import authorisation would no longer be required for bringing medicines into Northern Ireland. This derogation is based on marketing and labelling conditions that the UK would apply and the implementation of the EU Falsified Medicines Directive. Shipment

119 The non-paper notes that the approach for movements of live animals set out in the UK command paper envisages systematic checks on Great Britain-Northern Ireland movements based on UK law rather than EU law.
of medicines into Northern Ireland should also be made by persons holding authorisations issued in accordance with EU law. In addition, the EU repository system will ensure that an alert is generated when the medicine made available to Northern Ireland is sold elsewhere in the EU.

**Enforcement and supervision** by the UK competent authorities should be carried out in accordance with applicable EU law. Among other things, the UK would have to notify the Commission of the list of medicines covered by national authorisations, as well as the references of the corresponding authorisation codes that will be stamped on the medicine packs, and it would establish a publicly available database that will be regularly updated. Further practical details for monitoring are provided by the Commission.

Discussions should continue so as to ensure in practice that the UK national authorisation procedures for Great Britain (governed by UK domestic law) and for Northern Ireland (governed by EU law) ensure the continued use of a single medicine pack and leaflet for patient information.

In order to provide further flexibility with respect to compliance with the safety features that are mandatory for prescription medicinal products for human use, the paper proposes another three-year derogation from some of the obligations.

### 4.4. Positions

In its resolution of 28 April 2021 on the outcome of the EU-UK negotiations,\(^{120}\) which accompanied its consent to the EU-UK TCA, the European Parliament took a firm position against the UK's 'unilateral actions', which it considered to be in breach of the WA and presenting a 'serious threat to the integrity of the single market'. It called 'strongly' on the UK government to implement the WA in accordance with the good faith obligation under the WA, and encourages the Commission to pursue infringement proceedings against the UK 'with vigour'.

In the command paper, the UK government notes that exports from Northern Ireland to Ireland represent 0.5% of all imports to the EU and thus the 'risks to the EU' of the proposed new arrangements are 'extremely low in practice'. Moreover, they would be supported by 'strong data-sharing arrangements' and 'other law enforcement cooperation'. On 12 October, Lord Frost said he understood why the EU felt it was difficult to come back to an agreement reached only two years ago, but that there was a 'widespread feeling in the UK' that the 'UK's negotiating hand was tied, and therefore cannot reasonably last in its current form'. To Lord Frost, the Protocol was 'not working' and had 'completely lost consent in one community' in Northern Ireland, and was doing the opposite to protecting the GFBA.\(^{121}\)

---

\(^{120}\) European Parliament legislative resolution of 28 April 2021 on the draft Council decision on the conclusion of the Trade and Cooperation.

\(^{121}\) Lord Frost speech: Observations on the present state of the nation, 12 October 2021, Lisbon.
In Northern Ireland, small firms have voiced their concerns as to the perceived effects of the Protocol. Although the Protocol has created an opportunity, it has had an impact on the supply of goods coming from Great Britain; the increased costs and complexity of paperwork are perceived to be the main causes. New suppliers had been found on the island whenever possible.122

However, a poll published on 26 October 2021 by Queen’s University Belfast shows that although a substantial majority of respondents continue to view the Protocol as having a negative impact on a range of matters, opinions have shifted favourably in terms of the impact on the economy of Northern Ireland (52%) and protecting the GFBA (47%). In addition, a majority of Northern Ireland voters want their MLAs to vote for full application of the Protocol (Figure 1).123

The European Commission has stated that its proposals are designed to further facilitate the movement of goods from Great Britain to Northern Ireland and respond to the difficulties the Northern Irish people have been experiencing since the UK’s withdrawal from the EU.124

Box 3 – Safeguards measures (Article 16) and dispute settlement

In its command paper, the UK government declares that 'it is clear that the circumstances exist to justify' invoking Article 16 (paragraph 29), on grounds of significant disruption in trade between Great Britain and Northern Ireland, societal and consumer effects, political and community instability, and disorder, with the Protocol cited as one of the significant contributing factors.

The Protocol’s Article 16 indeed envisages that a party may ‘unilaterally take appropriate safeguards measures’ if application of the Protocol leads to ‘serious economic, societal or environmental difficulties that are liable to persist, or to diversion of trade’. The measures should be restricted with regard to their scope and duration to what is strictly necessary in order to remedy the situation. Nevertheless, if a safeguard measure creates an ‘imbalance between the rights and obligations under the Protocol’, the other party may take rebalancing measures to remedy the imbalance. Safeguard and rebalancing measures are governed by the procedures set out in Protocol Annex 7. It envisages that the party, which intends to take safeguard measures, must notify the other party through the Joint Committee and a one-month period following the notification must be respected before any actions may be taken (except in exceptional circumstances). The safeguard measures shall be the subject of consultations in the Joint Committee every three months with a view to their abolition, or to the limitation of their scope of application. The same procedure applies to rebalancing measures.

Dispute settlement of the Withdrawal Agreement is governed by Title III (Dispute Settlement). Article 168 WA envisages that for ‘any dispute’ arising under the WA, the parties shall ‘only’ have recourse to the procedures provided by the WA. After written notice has been given to the Joint Committee, the parties have three months to reach an agreement. If no mutually agreed solution has been reached within this period, a party may request the establishment of an arbitration panel in writing to the other party and to the International Bureau of the Permanent Court of Arbitration (PCA) (Article 170 WA). The arbitration panel should be composed of five members drawn from the list established by parties, within 15 days of the date of request. Each party should nominate two members each, and the four nominated members nominate the chair. If no agreement about the chair is reached, the latter is to be nominated by the secretary general of the PCA within 5 days (Article 171 WA). The arbitration panel shall notify of its ruling within 12 months. However, a request may be submitted by one of the parties within 12 days after the establishment of the panel arguing that the case is urgent, and if the panel recognises the urgency (within 15 days), a decision about the case shall be issued within 6 months (Article 173 WA). Moreover, Article 174 WA specifies that where a dispute submitted to arbitration raises (a) a question of a concept of EU law, (b) a question of interpretation of a provision of EU law referred to in the WA, or (c) a question of whether the UK has complied with its obligations under Article 89(2) (judgments and orders of the CJEU handed down before the end of the transition period), the arbitration panel shall not decide and should ask the CJEU to give a ruling on the question.

123 Queen’s University Belfast, poll of Northern Ireland voters, 26 October 2021. The poll took place before the publication of the EU non-papers.
5. References


This EPRS paper analyses the implementation of the UK Withdrawal Agreement in three areas identified by the EU as key to ensuring the UK’s orderly exit from the Union: financial settlement, citizens’ rights and the Ireland/Northern Ireland Protocol. The citizens’ rights provisions contained in Part Two of the Agreement are designed to protect the rights of both EU and UK citizens who had exercised free movement and made life choices based on the rights flowing from the UK’s membership of the EU. The paper focuses on the UK’s implementation of the citizens’ rights provisions in the Agreement, along with the rights provided to protected UK citizens under the Agreement. The paper also discusses the Protocol on Ireland/Northern Ireland. While the Protocol aims to safeguard peace on the island of Ireland, it has been contentious in the UK, due to perceived effects on domestic supply chains. The paper discusses the issues under consideration and EU-UK negotiations to resolve the issues concerned.