NOTICE TO MEMBERS

Subject: Petition No 0926/2018 by Anthony Valcke (Belgian) on behalf of the EU Rights Clinic and the Platform for International Cooperation on Undocumented Migrants (PICUM), on the compatibility of the new EU Settlement Scheme for EU citizens residing in the UK with EU law

1. Summary of petition

The petition is on the alleged failure of the UK authorities to comply with EU law relating to the pilot EU Settlement Scheme. The EU Settlement Scheme is foreseen to become operational when the UK withdraws from the EU at the end of the transitional period (31.12.2020). As the UK will remain an EU Member State during this period, and therefore remain obliged to apply the substantive provisions of EU law, the petitioner urges the European Parliament to take action on a number of recommendations to ensure that the UK authorities do not circumvent the application of the Withdrawal Agreement. Firstly, the petitioner recommends that the EU Settlement Scheme should provide for a printed copy of the digital residence document to have probative value. Second, since the Scheme applies to family members of British citizens who return to the UK after residing in another Member State, the Scheme needs to comply with EU rules on the right to return following residence in another MS. Third, the EU Settlement Scheme should be extended also to include primary carers of British citizens residing in the UK. Fourth, the mandatory grounds for refusing applications appear to be discriminatory, going beyond what is permitted under EU law and this is why a revision is called for. Fifth, the EU Settlement Scheme must allow vulnerable persons to make out-of-time applications for an EU settled status. The petitioner also suggests that the EU’s assistance services (i.e. SOLVIT and Your Europe Advice) should be permitted to continue offering advice and assistance to applicants under the Scheme.

2. Admissibility

Declared admissible on 31 January 2019. Information requested from Commission under Rule 227(6).
3. **Commission reply**, received on 30 August 2019

The Commission considers that there are no elements in the petition that would lead it to conclude that the United Kingdom authorities’ implementation of the pilot phase of the EU Settlement Scheme has infringed or is infringing EU law.

EU law continues to apply fully in the United Kingdom until the time of its actual withdrawal from the Union\(^1\). An anticipated implementation of the scheme may neither affect nor discontinue any rights or obligations EU citizens and their family members (whether Union citizens or third country nationals) have under EU law or the Immigration (European Economic Area) Regulations 2016, which are the United Kingdom rules enacting in national legislation EU law on free movement of EU citizens. Individuals concerned may enforce relevant rights derived from EU law before United Kingdom courts.

In particular, residence documents or statuses granted or rejected during the pilot phase may not replace residence documents or statuses granted under EU law or the Immigration (European Economic Area) Regulations 2016.

The Commission has no reason to believe and has not received any evidence that the pilot phase of the EU Settlement Scheme (*its design, its legal rules or actual decisions taken*) negatively affects the rights EU citizens and their family members enjoy in the United Kingdom pursuant to EU law on free movement of EU citizens. Such rights may be constrained only in accordance with the safeguards enshrined in EU law.

The pilot phase of the EU Settlement Scheme was designed to prepare for the implementation of the scheme foreseen under the Withdrawal Agreement. The EU Settlement Scheme has now been fully deployed and is running in view of anticipating the implementation of the Withdrawal Agreement or the no deal scenario.

To the extent that the petitioners invoke a violation of the Withdrawal Agreement, it must be observed that the latter has not been ratified and has not entered into force. Any claim of a violation of the Withdrawal Agreement could only be addressed by the Commission once it is in force.

**Conclusion**

The Commission considers that there is no element contained in the petition supporting the conclusion that the United Kingdom authorities have violated EU law in the context of the anticipated implementation of the EU Settlement Scheme.

\(^1\) Judgment of 19 September 2018 in case C-327/18 PPU *RO (EU:C:2018:733)*, paragraph 45.