

President Juncker  
European Commission  
Rue de la Loi / Wetstraat 200  
1049 Brussels  
Belgium

2 July 2018

Dear President Juncker

**EU rights of persons who are, or are entitled to be, Irish and hence EU Citizens in Northern Ireland after BREXIT (EN E-002232/2018)**

The Committee on the Administration of Justice (CAJ) is an independent human rights NGO with cross community membership in Northern Ireland and beyond. It was established in 1981, campaigns on a broad range of human rights issues. CAJ has been awarded several international human rights prizes, including the Reebok Human Rights Award, and in 1998 was awarded the Council of Europe Human Rights Prize.

We write seek revision of the Commission's position on the above matter as expressed in your recent response of the 22 June 2018 to the question submitted under Rule 130 by Martina Anderson MEP (GUE-NGL) (reference number EN E-002232/2018).

First, we would like to acknowledge both the work and solidarity the EU has demonstrated towards the particular circumstances of this jurisdiction throughout the negotiation period to date. We are however, concerned that the Commission's response on the above matter departs from the commitments in Paragraph 52 of the December 2017 EU-UK Joint Report, and, given that this matter is subject to the current round of negotiations, seek urgent redress.

As you are aware almost all persons born in Northern Ireland (NI) are, or are entitled to be, Irish citizens and hence EU citizens. This fact is accepted and recognised by the UK in the

Good Friday Agreement (GFA).<sup>i</sup> We will continue to be in the unique position that almost all the current NI Ireland population (98% of whom are EU-born the vast majority in NI itself)<sup>ii</sup>, and almost all those born subsequently here, will continue to be/ entitled to be EU citizens in accordance with Article 20(2) TFEU<sup>iii</sup>, even after a BREXIT.

Paragraph 52 of the Joint EU-UK Phase 1 report explicitly commits to the ongoing exercise and access to EU rights for Irish citizens *residing in Northern Ireland*. As you will be aware many of these rights are normally dependent on residency within an EU member state. Therefore, realisation of Paragraph 52 requires and commits the UK & EU to a special status type arrangement, at least on this issue, that would reflect the unique circumstances of NI. As a number of statements by the UK and Irish government reflect, the commitment goes well beyond the rights of Irish (or other EU citizens) in existing third countries, which would neither require the new arrangements Paragraph 52 commits to, nor be tied to residency in NI. The provision we understand would consequently cover EU rights such as: political rights to stand as and vote for MEPs; continued use of the European Health Insurance Card; studying elsewhere and being able to avail of EU student fee rates; and rights to be joined by (non-EEA) family members. The commitment in Paragraph 52 reads:

...The people of Northern Ireland who are Irish citizens will continue to enjoy rights as EU citizens, **including where they reside in Northern Ireland**. Both Parties therefore agree that the Withdrawal Agreement should respect and be without prejudice to the rights, opportunities and identity that come with European Union citizenship for such people and, in the next phase of negotiations, **will examine arrangements required to give effect to the ongoing exercise of, and access to, their EU rights, opportunities and benefits**.<sup>iv</sup>

As you will be aware such an arrangement would essentially have to consider EU qualified citizens in NI *as if* they were resident within the EU to ensure continued access to such rights. This provision should also be read with the broader standalone ‘no diminution’ commitment by the UK in Paragraph 53 of the Joint Report. This paragraph first alludes to the important provisions on rights in the GFA for which EU law has provided a supporting framework. It then states that:

The United Kingdom commits to ensuring that no diminution of rights is caused by its departure from the European Union, including in the area of protection against forms of discrimination enshrined in EU law. <sup>v</sup>

Paragraph 53 then commits the UK to facilitating the work of the GFA-established Human Rights and Equality commissions in upholding human rights and equality standards. Before the Commission’s recent response, we were already concerned that the above ‘no diminution’ commitment has been mistranslated, in Article 1 of the draft Ireland and Northern Ireland Protocol, into a commitment that only refers to one section of the GFA. We would also like to see this addressed. Whilst the above paragraph 53 commitment by

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the UK can be read to include EU rights of Irish citizens, it clearly refers to a much broader range of rights.

As you have restated recently Paragraph 42 of the Joint Report also commits both the UK and EU to protect the GFA 'in all its parts'. The GFA includes the aforementioned birthright to identify as and hold Irish or British citizenship or both. As the UK has reiterated in its BREXIT position papers, the broader provisions of the GFA mean that persons exercising this birthright are to be afforded "equal treatment irrespective of their choice."<sup>vi</sup>

This prompts the examination of arrangements for those who wish to solely identify as British in NI but who remain entitled to be Irish and hence EU citizens. This could be accomplished by treating persons in NI in this category as "qualified persons" who are entitled to the rights of EU citizenship. This, *in the particular circumstances of Northern Ireland*, would avoid the inequality in access to rights and entitlements between those who choose to be Irish or British that would otherwise be created. Whilst we are conscious that the EU would only likely agree to such an arrangement on the basis of reciprocity for EU26 citizens resident in NI, this would also be a positive development.

Our concern is that in conflict with all of these commitments the position of the European Commission expressed in response EN E-002232/2018 would remove access to almost all EU rights from Irish citizens in NI. It would limit Irish citizens in NI to holding mostly only 'dormant' EU rights only that are only exercisable if the rights holder leaves NI and takes up residence in another EU member state. In a practical sense (given that consular assistance by another member state has no practical application in NI) this would render Irish citizens in NI as having *fewer* EU rights than Irish citizens resident in existing third countries.

In our view the position arrived at by the Commission is incompatible with the commitments in Paragraph 52 of the Phase 1 Agreement. It also conflicts with the commitment to protect the GFA in all its parts and with the European Council (Article 50) Guidelines of December 2017 that "*all commitments undertaken in the first phase be respected in full and translated faithfully into legal terms as quickly as possible.*"<sup>vii</sup>

The Rule 130 question put to the Commission specifically seeks clarity on the legal mechanisms required to give effect to continued access to the EU rights of NI resident Irish citizens as provided for in Paragraph 52 of the Phase 1 Agreement. The Commission's response states that these are the 'dedicated mechanisms' set out in Article 1 of the draft Protocol. However, the Article 1 mechanisms relate to the separate commitments in Paragraph 53 of the Phase 1 Agreement, that the draft Protocol interprets as relating to a sole section of the GFA, citing anti-discrimination law. Article 1 also references the NI Human Rights and Equality Commissions. None of these mechanisms have the power or competence to afford access to or enforce the ongoing exercise of EU rights of Irish citizens in Northern Ireland, and it appears two separate provisions have been confused.

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In our view, the Commission is mistranslating the commitments given in the Joint Report with respect to EU rights of persons in NI who are, or entitled to be, Irish citizens. We would therefore request that as a matter of urgency you clarify, review and remedy this position.

Yours sincerely



Brian Gormally  
Director

Cc TF50, EP Brexit Working Group, EU Council Task Force on the UK.

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<sup>i</sup> British Irish Agreement Article 1(vi) (GFA Bilateral UK-Ireland Treaty - UK Treaty Series no. 50 Cm 4705) The UK and Ireland “recognise the birthright of all the people of Northern Ireland to identify themselves and be accepted as Irish or British, or both, as they may so choose, and accordingly confirm that their right to hold both British and Irish citizenship is accepted by both Governments and would not be affected by any future change in the status of Northern Ireland.” All persons born in NI before 2004 legislative changes are entitled to be Irish citizens, following this time the entitlement continues save for persons both of whose parents are temporary migrants.

<sup>ii</sup> The most recent 2011 Northern Ireland Census (Country of Birth: KS204NI (statistical geographies) table finds that 98% of the NI population were EU born; 88% were NI born, 2% born elsewhere in Ireland, 5% elsewhere in the UK and 3% EU26. 2% were born outside the EU. All persons born in NI before 2004 legislative changes are entitled to be Irish citizens, following this time the entitlement continues save for persons both of whose parents are temporary migrants.

<sup>iii</sup> Article 20(2) TFEU “Every person holding the nationality of a Member State shall be a citizen of the Union.”

<sup>iv</sup> Joint EU-UK Phase 1 Report, TF50 (2017) 19, 8 December 2017, paragraph 52 (emphasis added).

<sup>v</sup> Joint EU-UK Phase 1 Report, TF50 (2017) 19, 8 December 2017, paragraph 53.

<sup>vi</sup> UK Government, ‘Northern Ireland and Ireland Position Paper’ 16 August 2017, Paragraph 12.

<sup>vii</sup> Paragraph 1 <http://www.consilium.europa.eu/media/32236/15-euco-art50-guidelines-en.pdf>