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**REPORT FROM THE COMMISSION**

**pursuant to Article 159(2) of the Withdrawal Agreement**

# REPORT FROM THE COMMISSION

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## 1. Introduction

In accordance with the EU-UK Withdrawal Agreement, the European Commission and the UK's Independent Monitoring Authority (IMA) shall, on an annual basis, inform the Specialised Committee on Citizens' Rights referred to in point (a) of Article 165(1) of the Withdrawal Agreement on the implementation and application of Part Two thereof in the Union and in the United Kingdom, respectively. The information provided shall, in particular, cover measures taken to implement or comply with Part Two and the number and nature of complaints received.

The first report of the Commission was adopted on 4 November 2022<sup>1</sup>. It is available at [the Commission's website dedicated to citizens' rights part of the Withdrawal Agreement](#).

This report is the second Commission report under the above-mentioned obligation and covers the year 2022 as the second 12-month period after expiry of the transition period.

## 2. Overall assessment of the implementation of Part Two of the Withdrawal Agreement

The Commission is fully committed to protecting citizens' rights in accordance with the obligations under the Withdrawal Agreement.

The European Union as such shares the same commitment, as the EU co-chairs of the Specialised Committee on Citizens' Rights and of the Joint Committee, dedicated bodies established by the Withdrawal Agreement to supervise and facilitate the implementation and application of the Withdrawal Agreement and to seek ways of preventing problems, have repeatedly stated in their capacity of Union representatives.<sup>2</sup>

Thanks also to the shared commitment of the European Commission and the EU Member States to implement the Withdrawal Agreement correctly and fully, its implementation in EU Member States is satisfactory. The Commission considers that the implementation is now more mature, compared to the run-up to the end of the transition period and the first year after the transition period.

Overall, for most UK beneficiaries the transition from EU law on free movement of EU citizens to the Withdrawal Agreement has been smooth.

Any challenges or tensions arising are promptly addressed by Member States, with guidance and assistance by the Commission. Overall, Member States take a flexible and pragmatic approach to solve problems encountered by UK beneficiaries. Following this constructive approach, there were less issues drawn to the Commission's attention in 2022 by the United Kingdom, external stakeholders, or individual UK beneficiaries compared to the previous year.

The Commission continues to support Member States in their implementation efforts. To that effect, multiple teams within the Commission work together on monitoring, enforcement, and promotion of effective implementation of the Withdrawal Agreement. They coordinate a

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<sup>1</sup> Report from the Commission pursuant to Article 159(2) of the Withdrawal Agreement, C(2022)7851 final.

<sup>2</sup> Joint statements from the Joint Committee and the Specialised Committee on Citizens' Rights are available at [the Commission's website dedicated to the governance of the Withdrawal Agreement](#).

network across the Member States and engage bilaterally with Member States at expert level the moment an issue is identified to seek clarifications and assurances on issues identified. The focus on pragmatic resolution from the outset is bearing fruit as most issues are resolved before any formal enforcement measures are needed. To resolve identified issues, the Commission prioritises cases that are cross-cutting and systemic or affect bigger groups of beneficiaries.

### 3. Role of the European Commission

As the Withdrawal Agreement forms part of Union law, the Commission acts as its guardian in accordance with Article 17 of the Treaty on European Union.

Therefore, the Commission has the task of ensuring uniform and correct application of the Withdrawal Agreement throughout the Union under the control of the Court of Justice of the European Union. It gathers information to monitor EU Member States' compliance with the Withdrawal Agreement and enforces it.

In monitoring and enforcing the Withdrawal Agreement, the Commission relies on its usual independent role of guardian of EU law, complementing work of other institutions and stakeholders at local, regional, national and European level.

The Commission also promotes the effective implementation of the Withdrawal Agreement, where necessary by adopting legal acts implementing Part Two of the Withdrawal Agreement and providing guidance to harmonise the implementation at national level.

Despite the unique nature of the Withdrawal Agreement, the Commission has used much of its standard monitoring and enforcement toolkit it uses with respect to Union law, which the Withdrawal Agreement has grandfathered, such as Union law on free movement of EU citizens or coordination of social security schemes.

The Commission's role is closely mirrored by the IMA, which is an internal watchdog within the United Kingdom established by the Withdrawal Agreement to have monitoring and enforcement powers similar to those the Commission has vis-à-vis EU Member States.

### 4. Measures taken to implement or comply with Part Two of the Withdrawal Agreement

This report covers measures taken at Union level as well as those taken by EU Member States.

#### a. Measures taken at Union level

##### i. Legal acts to implement Part Two of the Withdrawal Agreement

Given that there was no need to adapt the EU legislative framework, no legal acts to implement Part Two of the Withdrawal Agreement were adopted in 2022.

Even though not strictly speaking a legal act adopted by the Union to implement Part Two of the Withdrawal Agreement, the Joint Committee adopted a decision to amend Part I of Annex I to the Withdrawal Agreement. In the interest of legal certainty, the Decision amended Part I

of Annex I by adding five decisions and two recommendations of the Administrative Commission for the Coordination of Social Security Systems, and by removing two decisions.<sup>3</sup>

## ii. Promoting the effective implementation of Part Two of the Withdrawal Agreement

### *Working with Member States and the European Parliament*

Close cooperation with Member States is vital to promote the effective implementation and application of the Withdrawal Agreement.

The Commission continued to work very closely with the Council and in particular the Council's Working Party on the United Kingdom that assists Coreper and the Council in all matters pertaining to the relationship with the United Kingdom, following its departure from the EU. Citizens' rights are regularly discussed at the meetings of the Working Party. Working methods on how the Commission and the Working Party cooperate are under constant review to ensure that the Withdrawal Agreement is correctly implemented.

To promote a uniform application of Part Two of the Withdrawal Agreement in EU Member States after the end of the transition period, the Commission has been regularly providing guidance and legal advice to the Working Party, both formally and informally.

In 2022, the Commission held one meeting of [the Expert Group on the right to free movement of persons \(Directive 2004/38/EC\)](#) dedicated to the implementation of the residence rights provisions of the Withdrawal Agreement.

In addition, throughout the year the Commission provided guidance to the Expert Group on the following matters:

- the scope of application of Article 21 of the Withdrawal Agreement;
- having Withdrawal Agreement beneficiary status in more than one Member State and the definition of frontier worker;
- having Withdrawal Agreement beneficiary status in more than one Member State and the applicable absence rules;
- family members who are eligible to join Withdrawal Agreement beneficiaries after the end of the transition period and visa facilitations;
- visits of family members in the form of short stays falling outside the Withdrawal Agreement;
- Withdrawal Agreement beneficiaries travelling without a valid residence document;
- equal treatment provisions; and
- absence rules.

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<sup>3</sup> Decision No 1/2022 of the Joint Committee established by 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 of 21 February 2022 amending the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, OJ L 43, 24.2.2022, p. 84–85.

With respect to Chapter Two of Title II of Part Two, the Commission updated the Advisory Committee for Free Movement of Workers in November 2022 on developments concerning the Withdrawal Agreement and provided necessary guidance to Member States and beneficiaries of the Withdrawal Agreement.

With respect to Chapter Three of Title II of Part Two, the Commission provided necessary guidance to Member States and beneficiaries of the Withdrawal Agreement and also updated its guidance note on the recognition of UK professional qualifications in the Union, following the United Kingdom's withdrawal, in particular with respect to qualifications obtained in the United Kingdom before the end of the transition period by EU citizens.

Regarding Title III, the Withdrawal Agreement's rules on coordination of social security systems are designed to protect those who were in a cross-border situation involving both the United Kingdom and (at least) an EU Member State at the end of the transition period.

From the legal and administrative point of view, the Withdrawal Agreement provides for the continuation of the rules and practices pursuant to EU Regulations<sup>4</sup> governing social security coordination applicable to the United Kingdom when it was still an EU Member State. The Withdrawal Agreement is implemented by the Member States in the same way as the EU Regulations, including a role for the Administrative Commission, a body in charge in particular with dealing with all administrative questions or questions of interpretation arising from the provisions of EU Regulations governing coordination of social security systems at the EU level.

In 2022 the Commission provided necessary guidance to Member States and beneficiaries of the Withdrawal Agreement on the Withdrawal Agreement's rules on coordination of social security systems.

To further facilitate travel of Withdrawal Agreement beneficiaries and harmonise the application of the Withdrawal Agreement with regard to the Schengen acquis, the Commission updated relevant Annexes of the Practical Handbook for Border Guards (Schengen Handbook) to reflect Member States' notifications.

In particular, the Commission updated the following Annexes:

- Annex 22 (List of residence permits issued by Member States) to include the titles of documents that Withdrawal Agreement beneficiaries in host States with declaratory schemes may use to evidence their beneficiary status before holding a Withdrawal Agreement residence document; and
- Annex 43 (Specimen of documents that beneficiaries of the Withdrawal Agreements (EU-UK, IS/LI/NO-UK, CH-UK) may hold before being in possession of the new residence document issued either in accordance with Commission Implementing Decision (EU) 2022/1945 of 21 February 2020 or in accordance with the Withdrawal Agreements concluded by Iceland, Liechtenstein and Norway on the one hand and Switzerland on the other hand) containing the specimen of documents relevant for the application of the Withdrawal Agreement.

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<sup>4</sup> Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems, OJ L 166, 30.4.2004, p. 1–123 and Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems, OJ L 284, 30.10.2009, p. 1–42.

The Commission also continued to report regularly to the European Parliament, in particular to the [UK Contact Group](#) and the Monitoring Group on the implementation of the Agreement on the withdrawal of the UK from the EU (established by the Committee on Constitutional Affairs).

#### *Information and awareness raising*

In March 2022, the Commission also updated [a dedicated website](#) that provides key information about national residence schemes for each EU Member State.

In March 2022, the Commission published two guidance documents. One guidance document covers rules for stamping of passports of UK beneficiaries when entering or leaving the Schengen area and how the beneficiary status can be shown. The other guidance document clarified that UK beneficiaries may hold multiple immigration statuses and multiple respective residence documents.

In July 2022, the Commission published updated Questions and Answers documents to describe the rights and entitlements UK beneficiaries enjoy under the Withdrawal Agreement in their EU host State after expiry of the application deadlines in Member States operating constitutive residence schemes under Article 18(1) of the Withdrawal Agreement.

Guidance documents have been published on [the main Commission website on citizens' rights part of the Withdrawal Agreement](#), together with an overview of various national implementation choices, such as whether Member States opted for a constitutive or declaratory residence scheme under the Withdrawal Agreement, since when UK beneficiaries and their family members could apply for a new residence document and by when they have to do it.

To further promote transparency regarding the uniform format in which all residence documents under the Withdrawal Agreement are issued, the Commission's Implementing Decision of February 2020 was published in the Official Journal in October 2022.<sup>5</sup>

#### *Working with external stakeholders*

The Commission also engaged with various external stakeholders representing EU citizens living in the United Kingdom and UK nationals living in the EU and academics to get a better picture of lived experience of the Withdrawal Agreement on the ground and to use external stakeholders and their networks to disseminate wider information about the Withdrawal Agreement and its interpretation.

### **iii. Monitoring of implementation of Part Two of the Withdrawal Agreement**

The monitoring of implementation of Part Two of the Withdrawal Agreement comprised both proactive and reactive elements.

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<sup>5</sup> Commission Implementing Decision (EU) 2022/1945 of 21 February 2020 on documents to be issued by Member States pursuant to Article 18(1) and (4) and Article 26 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 (notified under document C(2020) 1114), OJ L 268, 14.10.2022, p. 26–28.

In line with its standard operating practice, the Commission continued proactively to review national laws, regulations and administrative provisions brought into force to implement the Withdrawal Agreement.

Information about lived experience has also been provided by civil society stakeholders representing UK beneficiaries living in EU Member States. Such engagement has helped the Commission to better understand the impact of the Withdrawal Agreement on the ground and identify emerging issues. The Commission worked closely together with external stakeholders to provide clarifications on the interpretation of the Withdrawal Agreement.

While this intense cooperation with representative stakeholder networks to some extent crowded out individual complaints by UK beneficiaries, the Commission continued to receive such complaints in 2022. Section 5 covers this in more detail.

Some of the bilateral and horizontal exchanges were based on information provided by the United Kingdom (including in the Specialised Committee on Citizens' Rights and the Joint Committee). Other exchanges were based on Member States' questions.

Where issues were identified, they were discussed informally with the Member States concerned to seek early resolution ensuring that national rules were quickly brought in line with the Withdrawal Agreement and that any potential impact on the rights under the Withdrawal Agreement was kept to a minimum.

#### *Horizontal monitoring of all Member States*

In 2022, the Commission carried out a comprehensive review of the rules on the non-permanent right of residence and on the switch from a non-permanent right of residence to the right of permanent residence in Member States with a constitutive residence scheme.

As a result, the Commission followed up with three Member States.

Regarding one Member State, the Commission found that the concerned Member State provided for the expiry of the right of non-permanent residence and required a second constitutive application for permanent residence. Following the Commission's intervention, which started in November 2022 and extended into 2023, the Member State concerned changed its approach and assured that this would also be reflected in legislation by way of legislative amendments to be made in the second half of 2023. The Commission continues to closely monitor the legislative process in that Member State.

Regarding other two Member States, the exchanges between the Commission and the Member States concerned led to the conclusion that those Member States implemented the Withdrawal Agreement correctly on those points. However, both Member States rectified some potentially misleading information about their rules.

In 2022, the Commission also carried out a review of Member States' family reunification processes under the Withdrawal Agreement.

The review focused on practical aspects, such as possibility for joining family members to apply for beneficiary status and the availability of online information for joining family members.



The Commission found that the residence schemes of all Member States were open for joining family members, which means that all Member States accept and handle applications from family members of Withdrawal Agreement beneficiaries.

However, the Commission identified two Member States that had limited online information regarding the possibility for family members to join Withdrawal Agreement beneficiaries. The Commission reached out to these two Member States in November 2022 and suggested that additional information be uploaded on their relevant websites. Both Member States committed to improving their websites.

Furthermore, the Commission contacted Member States for information on:

- UK children in care;
- appeal possibilities and temporary protection in Member States with constitutive schemes; and
- multiple immigration statuses under EU law or national law of third-country nationals who legally reside in the EU (including but not limited to Withdrawal Agreement beneficiaries).

#### *Bilateral monitoring of implementation in individual Member States*

In 2022, the Commission had bilateral exchanges with Member States concerned to acquire more information on:

- availability of appointments for obtaining residence documents;
- health information being requested in an application form;
- fees for residence documents;
- format of the residence document issued to children;
- application and status of children;
- validity of residence documents in relation to the validity of passports;
- travel-related matters, including the issuance of visas for joining family members;
- the requirement of a Member States that its own nationals exit its territory based only on a passport when travelling to a non-EU country, including the United Kingdom;
- certain aspects of national measures implementing residence rights;
- handling of late applications in Member States with a constitutive scheme;
- deadline for applications for Withdrawal Agreement beneficiary status;
- loss of Withdrawal Agreement beneficiary status;
- absence rules;
- status of diplomats;
- multiple statuses and the issuance of multiple residence documents;
- validity and legal effects of residence documents held by Withdrawal Agreement beneficiaries other than the Withdrawal Agreement residence document;
- property rights;
- naturalisation in the host State and impact on family reunification; and
- falling in scope of the Withdrawal Agreement of dual EU/UK family members of mobile EU citizens.

## iv. Enforcement of Part Two of the Withdrawal Agreement

### *Internal dimension*

Overall, the Commission considers that EU Member States have implemented Part Two of the Withdrawal Agreement in a satisfactory manner.

In addition to horizontal measures seeking to improve the implementation of the Withdrawal Agreement described in the previous part, the Commission in 2022 bilaterally and more formally raised the issue of implementation and application of the citizens' right part of the Withdrawal Agreement with several Member States.

The Commission's experience with such bilateral contacts is positive. Bilateral contacts helped to resolve most of identified issues or clarified the matters raised by the Commission.

This constructive and result-oriented approach meant that the Commission did not have to initiate any formal procedure under Article 258 of the Treaty on the Functioning of the European Union or even to resort to litigation before the Court of Justice of the European Union in 2022.

#### A. Equal treatment regarding access to certain benefits

After the end of the transition period, UK beneficiaries with permanent residence in a Member State were no longer given access to certain categories of benefits.

Having received two formal complaints in 2021 and after contacting the Member State concerned in 2021, the Commission followed up with written exchanges between January and June 2022 and a meeting.

Following the Commission's intervention, the Member State changed its approach and issued new guidelines in May 2022 that resolved the issue.

#### B. Documents requested during the application process

The Commission contacted two Member States for information on their respective application procedure and on the documents requested by their authorities to evidence that the relevant conditions have been fulfilled.

In written exchanges in January and February 2022 and June 2022 respectively and in meetings with the Commission, both Member States provided the requested clarifications on their application procedures.

Having received the clarifications, implementation of the Withdrawal Agreement in relation to their application processes in those Member States was considered satisfactory.

#### C. Legal effects of a certificate of application and its format

The Commission contacted a Member State for information about certificates of application it was issuing.

This matter was the subject of written exchanges, including a meeting, between January and November 2022.

The Member State provided the requested clarifications and stressed that while it used to issue certificates of application in an incorrect format during a short period of time, it was at that time issuing certificates of application in the correct format. The Member State assured the Commission that there were no negative implications for Withdrawal Agreement beneficiaries.

The Commission also contacted another Member State on the format of its certificate of application and its legal effects.

This matter was the subject of written exchanges, including a meeting.

The Member State assured the Commission that it would continue to recognise the certificates of application after 31 December 2021, which would provide the holder with a legal right of residence until there is a final decision on the application.

It also provided clarifications regarding the format of the certificate of application. The Commission is still examining the Member State's reply on the matter.

#### D. Policy on appeals and refusals

The Commission asked a Member State for clarifications regarding its policy and guidance on appeal processes and refusals.

These matters were the subject of exchanges, including a meeting, in January and February 2022.

The Member State provided the requested clarifications that dispelled the concerns.

#### E. Rolling out the new residence document under the Withdrawal Agreement

This issue was covered in point g) of Section 3.iv of the previous annual report.

Exchanges, including meetings, between the Commission and the Member State concerned continued throughout 2022.

Following the Commission's intervention, the issuance of residence documents for UK beneficiaries started in February 2022 and the validity of previously issued free movement residence documents was extended until 31 December 2023. According to April 2023 data, over 30 thousand applications had been made and over 29 thousand residence documents had been issued. Registration for requesting a Withdrawal Agreement residence document became available on 23 January 2023 for non-UK family members.

The Commission continues to closely monitor the process of issuing the Withdrawal Agreement residence document in that Member State.

#### F. Application for the beneficiary status

The Commission contacted a Member State for information on whether all categories of UK beneficiaries can apply for Withdrawal Agreement status and whether they are required to apply for such status by the general application deadline.

This matter has been the subject of exchanges between the Commission and the Member State since 2020. Further exchanges and a meeting took place in 2022.

The Commission continues to monitor the implementation of the Withdrawal Agreement in that Member State on these matters.

#### G. Difference in treatment of certain groups of United Kingdom nationals

The Commission contacted a Member State for information on whether certain categories of UK beneficiaries have more favourable procedural and substantive rights than others and whether one category of UK beneficiaries is issued with a provisional residence document with limited validity, renewable once.

This matter has been the subject of exchanges between the Commission and the Member State since 2020. Further exchanges and a meeting took place in 2022.

The Member State provided explanations on these matters that are under consideration by the Commission.

#### H. Family members falling under Article 9(a)(ii) of the Withdrawal Agreement

The Commission contacted two Member States for information on national laws covering family members falling under Article 9(a)(ii) of the Withdrawal Agreement.

Following the request by the Commission, the Member States clarified that, while not covered by the implementing measures, internal guidelines made it clear that applications submitted by this specific category of family members were to be dealt with based on the directly applicable provision of the Withdrawal Agreement.

The Commission continues to monitor the implementation of the Withdrawal Agreement on this issue also in relation to other Member States.

#### I. Rejection rate

The Commission contacted a Member State for information on its rejection rate and communication activities regarding the Withdrawal Agreement beneficiaries and their rights.

These matters were the subject of written exchanges and a meeting, in May and June 2022.

The Member State explained the rejection rate and provided additional information on its communication efforts.

#### J. Multiple statuses

The Commission contacted two Member States for information on whether Withdrawal Agreement beneficiaries may hold multiple residence/immigration statuses at the same time and that multiple documents should be issued to a Withdrawal Agreement beneficiary holding multiple statuses.

In relation to one of those Member States, the contacts, which took place in April and May 2022, followed up on discussions that had taken place since 2020 (this issue was covered in point b) of Section 3.iv of the previous annual report).

In relation to the other Member State, the exchanges took place in September and October 2022.

The exchanges helped to clarify the Commission’s view. The Commission continues to monitor the implementation of the Withdrawal Agreement on this issue.

#### K. Durable partners

The Commission contacted a Member State for information on the extended family member definition of a ‘durable partner’ in the EU Free Movement Directive, which applies also under the Withdrawal Agreement.

The exchanges started in 2021 and continued in 2022.

The Member State clarified that it had amended its legislation already before the United Kingdom’ withdrawal to bring its national definition in line with the EU Free Movement Directive. It also confirmed that its domestic court recognised, in judgments delivered in 2020 and 2021, that the durable relationship may be proven by any appropriate means, which is not limited to documents issued by a public authority.

To understand whether there could nevertheless be a problem of uniform application by local authorities of the notion of official documentation, the Commission sought additional information from the Member State.

#### L. Legislation on fees for the new residence document

The Commission contacted a Member State for information on one aspect of the fees it charges for the issuance of the Withdrawal Agreement residence document.

Following exchanges in 2021, the Member State provided clarifications on its domestic policy.

The Member State also amended its laws in July 2022 to align the fee charged of persons under the age of 16 for a Withdrawal Agreement residence document with the fee charged of the same category of persons for a national identity card.

#### M. Handling of late applications

The Commission contacted a Member State for information on its handling of late applications and related communication measures.

In 2023 the Member State reopened the application deadline under Article 18(1) of the Withdrawal Agreement, by making a legislative amendment, to allow those who have not yet made applications for Withdrawal Agreement beneficiary status and those who were found not to have had reasonable grounds for having applied late to regularise their situation. The application deadline is now 31 December 2023.

#### N. Sufficient resources

The Commission contacted a Member State via an EU Pilot/Themis procedure regarding its domestic interpretation of the “sufficient resources” requirement according to the EU Free Movement Directive, as also referred to in the Withdrawal Agreement.

The Commission considered that economically inactive mobile EU citizens and UK beneficiaries who moved to the Member State concerned were required to demonstrate to have sufficient means upfront for five years of their envisaged residence. The Commission

considered the “sufficient resources” requirement to be interpreted too narrowly in practice in the Member State concerned.

Following the Commission’s intervention of April 2022, the Member State updated its internal guidance on this point in August 2022, bringing it in line with the EU Free Movement Directive and the Withdrawal Agreement.

### *External dimension*

In 2022, the Commission participated in one judicial case pending in the United Kingdom under Article 162 of the Withdrawal Agreement in support of the interpretation of the Withdrawal Agreement by the IMA.<sup>6</sup> This was the first exercise by the Commission of its powers under Article 162 of the Withdrawal Agreement.

The case concerned the question whether the United Kingdom’s pre-settled status (corresponding to the notion of the non-permanent right of residence under the Withdrawal Agreement) can be lost if the EU citizens concerned do not apply for settled status (a status meant to correspond to permanent right of residence) before their pre-settled statuses expire and whether the right of permanent residence is acquired automatically or can only be granted upon application.

[The judgment](#) confirmed the Commission’s interpretation. In February 2023, the United Kingdom Government decided not to pursue any appeal against the judgment, but rather implement it before first pre-settled statuses start to expire in autumn 2023.

No request to establish an arbitration panel under Title III of Part Six of the Withdrawal Agreement was made in the reporting period.

## **b. Measures taken at EU Member States level**

The Commission sought the following information from the Member States:

- most relevant instruments in place to implement Part Two of the Withdrawal Agreement;
- most relevant instruments implementing Part Two of the Withdrawal Agreement that were adopted or amended in the last year;
- most relevant domestic jurisprudence from the last year; and
- basic statistical data that show how the Withdrawal Agreement has been applied.

Responses from Member States are included in a document annexed to this report of which the report takes note.

Additional statistical data on coordination of social security systems are available at [the Commission’s website on network of experts on statistics](#).

## **5. Complaints**

The Withdrawal Agreement is enforced in the same way as any other instrument of Union law, both by direct action taken by individuals who believe that the national authorities of an

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<sup>6</sup> Judgement of the High Court of 21 December 2022 in case *The Independent Monitoring Authority for The Citizens’ Rights Agreements vs Secretary of State for the Home Department*, CO/4193/2021.

EU Member State have not respected the rights they enjoy under the Withdrawal Agreement and by action taken by the Commission.

Information acquired through individual complaints helped to complete information about the implementation of the Withdrawal Agreement and informed measures taken by the Commission.

### a. Solutions at national level

The most effective approach for UK beneficiaries to enforce their rights directly is to seek redress at national level, given that public authorities and national courts have the main responsibility for the correct application of the Withdrawal Agreement and can directly resolve individual cases.

In addition to administrative redress procedures, UK beneficiaries can make an appeal and ask the relevant domestic court to examine their case. The court will examine the legality of the contested national decision (or that no decision was at all made) and whether the decision was correct and proportionate, by looking into the facts and circumstances on which the decision is based. If the court finds a problem with national law, it can, in many instances, apply the provisions of the Withdrawal Agreement directly. Only national courts have the power, where appropriate, to order national authorities to compensate UK beneficiaries for losses they have suffered due to a breach of the Withdrawal Agreement.

### b. Solutions at EU level

In addition to any action UK beneficiaries may be pursuing at national level, they can submit a petition to the European Parliament or write to the Commission to file a complaint about any measure (law, regulation or administrative action), the absence of a measure or a practice by an EU country that they think breaches the Withdrawal Agreement.

The Commission's complaints handling policy is based on [Communication on EU law: Better results through better application](#), including its Annex. The 2022 Communication [Enforcing EU law for a Europe that delivers](#) presents the variety of tools that the Commission uses to ensure that EU law is properly applied in all cases to meet its main objective: that people and businesses benefit from the commonly agreed rules throughout the EU, as quickly as possible.

The Commission treats such complaints as any other complaints related to Union law. More information on how the Commission treats complaints is available [here](#). Complainants must use the standard [online complaint form](#) or download it from [the Commission's website](#), fill it in and submit by e-mail or by post.

The Commission can only take up the complaint if it is about a breach of the Withdrawal Agreement by authorities in an EU Member State. It cannot follow up matters that only involve private individuals or bodies, and that do not involve public authorities.

The Commission's action in response to a complaint is unlikely to directly resolve the complainant's personal situation as it is focused on ensuring that the laws of the EU country in question are brought fully in line with the Withdrawal Agreement and are correctly applied.

UK beneficiaries who find it difficult to find out which provision of the Withdrawal Agreement they think has been breached and what they can do about it can address queries to [the Your Europe Advice service](#), in their own language.

In some cases, they can also submit their case to [SOLVIT](#), a network of centres based in national administrations that work together to resolve problems related to the incorrect application of Union law in a cross-border context via cooperation.

As the United Kingdom is no longer part of the SOLVIT network, SOLVIT cannot offer its assistance in matters that require cooperation or intervention of some parts of the United Kingdom administration.

However, SOLVIT centres can offer some assistance to UK beneficiaries if their problems have a cross-border dimension and can be potentially solved by the administration of an EU country without any involvement of or contact with the United Kingdom administration. For example, SOLVIT could help UK beneficiaries residing in an EU country and experiencing problems in a cross-border context with their residence rights or social security rights there. SOLVIT's intervention is entirely dependent on the decision of each SOLVIT centre.

With the exception of SOLVIT, UK beneficiaries enforcing their rights under the Withdrawal Agreement enjoy the same level of support as EU citizens do.

### c. Statistical aspects

In the reporting period, the Commission registered 30 complaints falling under Communication C(2016)8600.

The number of complaints received and their division is in Table 1. When a complaint covers multiple topics or subtopics it is counted for each topic or subtopic.

**Table 1 – Complaints received in 2022**

Area	Overall number	Topic	Number	Subtopic	Number		
Chapter 1 of Title II	26	Rights related to residence, residence documents	19	Refusal	11		
				Delays	6		
				Handling of late applications	2		
				Failure to issue a certificate of application	1		
				Excessive requirements	1		
		Format	1				
		Travel and border crossing	7			Refusal to issue the visa to family members	3
						Restrictions to transit in a Member State	2
Mobility rights in other Member States	1						
Stamping of passports	1						
Title III	4	Pension	1	Delays	1		
		Unemployment	1	Entitlement	1		
		Invalidity	1	Calculation	1		



		Healthcare	1	Reimbursement	1
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No complaint has been registered on Chapters 2 (*Rights of workers and self-employed persons*) or 3 (*Professional qualification*) of Title II of Part Two in the reporting year.

Handling of complaints received by the Commission

By the end of June 2023, 13 complaints introduced in 2022 have been already closed.

Out of those complaints:

- 4 complaints were considered as founded but were not pursued further by the Commission;<sup>7</sup>
- 3 complaints were considered as founded but were solved by other means (*change of regional legislation and change of interpretation by national authorities*);
- 3 complaints were considered as unfounded, given that no violation of Union law was identified in the Commission’s assessment; and
- 3 complaints were considered as unfounded, as evidence at the Commission’s disposal was not sufficient to prove that the alleged infringement was actually being committed.

17 complaints made in 2022 were under consideration by the Commission that is seeking to resolve them as soon as possible.

SOLVIT

The United Kingdom SOLVIT centre closed on 31 December 2020. Before the end of the transition period, it had been one of the most active centres within the SOLVIT network: the United Kingdom SOLVIT centre handled 24 % of the overall SOLVIT cases in 2020.

In 2022 SOLVIT recorded 111 United Kingdom related cases. These cases concerned problems of UK beneficiaries in exercising their Withdrawal Agreement rights in EU Member States, but also problems EU citizens experienced in EU Member States in relation to having exercised their single market rights in the United Kingdom.

From these cases, SOLVIT had to reject two thirds of the cases (*74 cases*) as resolution of these cases would have required the intervention of the United Kingdom administration.

Out of 37 accepted cases that could be resolved without any intervention of the United Kingdom administration, 21 cases concerned Chapter 1 (*residence*), 2 cases concerned Chapter 3 (*professional qualifications*), 9 cases concerned Title III (*Coordination of social security systems*) and 5 cases concerned other related issues, such as vehicles and driving licences.

Of these cases accepted by SOLVIT, 32 cases were resolved.

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<sup>7</sup> Unless they raise a question of wider principle to be assessed in the general interest, such are complaints on individual cases of incorrect application of EU law where there are insufficient indications of a general practice, of a problem of compliance of national legislation with EU law or of a systemic failure to comply with EU law; and there are appropriate redress mechanisms at the national/EU level.

### Your Europe Advice

In 2022, Your Europe Advice received inquiries from 1739 United Kingdom nationals.

Of 1295 eligible inquiries, 64 % concerned Chapter 1 of Title II (*residence*), 6 % concerned Chapter 2 of Title II (*workers and self-employed persons*), 0.4 % of inquiries cases concerned Chapter 3 (*professional qualifications*), 14 % of inquiries concerned Title III (*Coordination of social security systems*) and other inquiries concerned other issues, such as vehicles and driving licences.

The top three issues concerning residence rights were linked to:

- rights of family members;
- residence application procedures; and
- visas and visa exemption.

The top three issues concerning workers and self-employed persons were linked to:

- access to employment;
- cross-border work and posting; and
- equal treatment in employment.

The top three issues concerning coordination of social security schemes were linked to:

- old age benefits;
- health care, sickness or maternity benefits; and
- country of insurance and general management of coordination of social security systems.