

**COMPLAINT
TO THE EUROPEAN COMMISSION
CONCERNING
FRANCE'S FAILURE TO COMPLY WITH EU LAW
THE FAILURE OF THE FRENCH MUNICIPAL AUTHORITIES
TO ISSUE RESIDENCE DOCUMENTATION
TO EU CITIZENS LAWFULLY RESIDING IN FRANCE**

Executive summary:

1. This complaint is submitted by the EU Rights Clinic on behalf of 23 individuals who have requested to remain anonymous. These individuals were referred to the Clinic by Remain in France Together (RIFT). Further information on the complainants is contained in Section 1 of this complaint.
2. This complaint relates to the failure of the French municipal authorities to issue correct residence documentation to EU citizens who are lawfully residing in France, thereby affecting their ability to prove their current lawful residence and jeopardising their future ability to prove their right of residence after Brexit.
3. Under EU law, Member States may require EU citizens to register their presence when residing on their national territory for more than three months as provided by Article 8 of Directive 2004/38. At present there is no requirement for EU citizens to register in France. Nonetheless, French legislation provides for the possibility for EU citizens to apply for a residence document at their local préfecture, even before they have completed a continuous period of residence of five years and obtain the right to permanent residence in France. French law also provides for EU citizens to obtain a document attesting to permanent residence after they have lived in France for a continuous period of five years.
4. The complaints received by EU citizens residing in France all relate to the failure of the French municipal authorities to issue residence documents to applicants who meet the conditions of permanent residence under Article 16 of Directive 2004/38 or ordinary residence under Article 7. The French authorities often issue residence documentation with a reduced period of validity (less than 5 years for an ordinary residence card and less than 10 years for a permanent card) or are being refused outright. The source of the problem appears to be that different préfectures follow different procedures than those prescribed by the French rules (often by following the rules applicable to third-country nationals). Furthermore, part of the problem resides in the confusion displayed by officials because EU citizens in France are entitled to have these cards but are not obliged to hold them under French law.

5. There is no objective justification for this failure by the French authorities. While the reason often cited is that applications submitted by British citizens will not be processed pending the outcome of Brexit negotiations, EU law remains in full force until the United Kingdom has withdrawn from the EU (subject to any transitional arrangement currently scheduled to end on 31 December 2020). According to the consistent case law of the Court of Justice, a Member State is obliged to comply with specific objectives laid down in directives and cannot plead external circumstances as justification for not meeting such clear objectives.
6. The failure of the French municipal authorities to issue the correct residence documentation to EU citizens affects their ability to prove their current lawful residence delay. This undermines their ability to benefit from equality of treatment alongside French nationals because other French public entities – such as the *Caisse d'Allocations Familiales* and the *Pôle Emploi* – are requesting residence documentation from EU citizens and their family members. It is also being requested by French municipalities when exchanging driving licences or registering a vehicle.
7. As a result, not only does the failure of the French authorities to issue the correct residence documentation to EU citizens breach Directive 2004/38 and undermine their ability to enjoy their right of free movement as guaranteed to all EU citizens and family members under Article 45 of the EU Charter of Fundamental Rights, it also deprives them from the genuine enjoyment of the substance of the rights attaching to the status of EU citizen contrary to Article 20 of the Treaty on the Functioning of the EU.
8. Furthermore, the failure of the French municipal authorities to issue correct residence documentation to British citizens who are lawfully residing in France jeopardises their future ability to prove their right of residence after Brexit. Indeed, following Brexit, the French authorities will be able to make the continued right of residence of British citizens conditional upon possession of a residence document, assuming Article 17(1) of the Withdrawal Agreement is adopted in its current form. The inability of British nationals and their family members to obtain residence documentation before Brexit will result in them being deprived of the protections and safeguards contained in the Withdrawal Agreement because the French authorities are likely to consider them as not having been lawfully resident in France before the end of the transitional period (currently scheduled for 31 December 2020).
9. The Commission has previously taken action against several Member States which have failed to issue residence documentation to EU citizens and their non-EU family members in accordance with the relevant Directives.
10. For these reasons, we respectfully call on the Commission to take robust enforcement action against France, as it has done on the past against the Spain, the UK and Ireland among others. The French authorities should also be invited to take certain remedial action to ensure residence formalities are complied with. The French authorities should

undertake to allow British citizens the possibility to prove their residence by all possible means after Brexit. The UK authorities should commit to signpost information about residence formalities more prominently on the website of the British embassy in France.

11. In the event the French authorities fail to rectify the problems identified in this complaint without further delay, the Commission is invited to take further specified recommended actions, including taking the matter to the EU Court of Justice.
12. A petition will be lodged by the EU Rights Clinic before the European Parliament at the same time as this complaint.
13. Submitted on 15 October 2018 on behalf of the EU Rights Clinic.

Anthony Valcke
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EU Rights Clinic