



**COMPLAINT
TO THE EUROPEAN COMMISSION
CONCERNING
FRANCE'S FAILURE TO COMPLY WITH
THE CITIZENS' RIGHTS PROVISIONS OF THE WITHDRAWAL AGREEMENT**

Executive summary

I have exchanged numerous emails requesting information on why I haven't received my card (which has been approved) after a rendezvous 9 months ago...

... it took three applications to get it ... However we both still don't have a carte vitale ...

My son is under 18 ... but has been denied by the Préfecture ...

... Préfecture is refusing to process my third-country-national husband's Withdrawal Agreement residence permit.

a brief selection of problems faced by RIFT members living in France

1. This complaint is jointly submitted by the EU Rights Clinic and RIFT.
2. This complaint relates to France's failure to comply with the provisions on citizens' rights contained in the Withdrawal Agreement.
3. The Withdrawal Agreement constitutes binding EU law and Member States are required to comply with its provisions with the same rigour as other instruments of EU law.
4. The majority of the provisions of the Withdrawal Agreement on citizens' rights have direct effect under EU law and place both positive and negative obligations on all 27 EU Member States.
5. Based on the numerous complaints which RIFT has received to date, it is clear that France is failing to fulfil its obligations under the Withdrawal Agreement.

6. This state of affairs imperils the acquired rights of well over 10,000 UK nationals, who are still awaiting a decision on their application¹ as well as those whose applications have been “*classé sans suite*”.
7. The failures by France to comply with its obligations under the Withdrawal Agreement are numerous:
 - (i) **Excessive delays:** There are many UK nationals who simply have not heard from their Préfecture regarding their applications. Some applicants have not even heard back despite having applied over a year ago. Processing times in several Préfectures are excessively slow. UK nationals have not received their Withdrawal Agreement residence permit (WARP) despite having attended an appointment in person. In some cases, applicants have not yet been offered an appointment.
 - (ii) **Excessive administrative burdens:** Several applicants report having been exposed to unreasonable requests for additional information and have been required to supply documentation which should only apply to ordinary third-country nationals. Such requests include being asked for details of language ability, education, family outside France, etc. which are not in line with the Withdrawal Agreement.
 - (iii) **No decision taken:** Many applications have been closed as “*classé sans suite*” without any decision being taken or residence document being issued. Emails have been sent to applicants from various Préfectures informing them that their application has been “*classé sans suite*” for not attending appointments that had not been given in the first place or for not answering emails. Some applicants will only realise that they are in this situation when they find themselves without being in possession of a compulsory residence card on 1 January 2022.
 - (iv) **Failure to assist applicants:** Préfectures are not providing information despite having having received requests for assistance. In previous joint reports of the Specialised Committee on Citizens’ Rights, France has claimed that “*points d’accueil*” would be available in each Préfecture to process applications but this has simply not happened in practice. Clearly, the COVID-19 pandemic has been an issue, but such facilities have only been made available in a handful of Préfectures. As a result, many vulnerable persons were forced to pay for obtaining assistance in order to apply and process their applications or they have had to rely on the UK Nationals Support Fund network which has now ceased operations.
 - (v) **Technical problems:** There are indications of applications having been submitted in 2020 or on the “no-deal” portal which cannot be located on the system by the Préfectures.
 - (vi) **Failure to issue correct documentation:** UK nationals are reporting many instances of receiving a WARP containing material errors. Their name, address or

¹ See Specialised Committee on Citizens’ Rights 16 September 2021, Fifth Joint Report on the implementation of residence rights under Part Two of the Withdrawal Agreement, Table 3: outcomes for a new residence status in constitutive systems – by host State, entry for France, page 36:
https://ec.europa.eu/info/sites/default/files/fifth_report_report_on_residence_rights.pdf

photograph may be incorrect, your photograph they have received a five-year ordinary residence card despite having lived in France for over five years and thereby acquired permanent residence rights. There are also reports of ordinary third-country national residence permits being issued with a much shorter validity. There are also instances of cross-border workers who reside in France but work in a neighbouring country having received an incorrect residence document (i.e. a “*carte de frontalier*”) only giving them the right to work in France, rather than a residence permit.

- (vii) **Failure to renew documentation:** Applicants who have changed address or have lost their WARP or have had it stolen card report being unable to get a replacement. There is no facility to update an address or get a replacement card. It is a source of particular concern for those with lost or stolen cards who will not realistically be able to obtain a replacement before year’s end. The new online residence permit renewal system² does not accept WARP cards and has been inaccessible since its inception over a month ago. Préfectures are referring UK nationals to the online system and but they are not replacing cards.
- (viii) **Failure to issue documentation to children:** French border control officers are regularly demanding WARPs from accompanied and unaccompanied children alike but these are not available to minor children under the age of 18. Although parents can apply for a “*document de circulation pour étranger mineur*” (DCEM), many Préfectures are charging parents for these (50€), unlike an application for a WARP which is free of charge. The process appears to differ according to Préfecture. Given that possession of a DCEM is not compulsory for non-EU minors when travelling with their resident parents, it appears that the French authorities are imposing excessive formalities instead of issuing WARP as required under the Withdrawal Agreement.
- (ix) **Failure to comply with family reunification after 31/12/2020:** UK nationals are reporting difficulties in exercising their right to family reunification after the end of the transition period. Family members present in France have been asked to return to the UK to apply for a visa or are experiencing other family reunification issues. In some cases family reunification has been refused outright on the basis that applications are no longer possible.
- (x) **Problems exercising equal treatment rights:** UK nationals are experiencing problems in their interactions with CPAM, CAF, or other government institutions. Problems continue being reported by UK nationals accessing the public healthcare system despite having lived in France for many years and being entitled to full equality of treatment.
- (xi) **Refusal to allow entry or permit travel:** UK nationals have also been denied boarding on flights or denied entry at the border because they do not yet hold a WARP.

² The system can be accessed here: <https://administration-etrangers-en-france.interieur.gouv.fr/particuliers/>

8. These problems remain unresolved by the French authorities, despite the warnings issued by RIFT in a previous report entitled “Sounding the Alarm Bell”³ and the complaint and petition submitted to the EU institutions by the EU Rights Clinic in 2018.⁴
9. For these reasons, we respectfully call on the Commission to take robust enforcement action against France to ensure that it puts an end to these infringements of the Withdrawal Agreement.
10. These issues need to be raised as a matter of urgency by the Commission with the French authorities. The Commission should obtain specific commitments that the application process will remain open to allow applicants to be able to launch a fresh application and to consider the problems identified in this complaint to be considered as constituting legitimate ground for not meeting the original deadline, including those whose applications has been filed as “*classé sans suite*”, those who have been issued incorrect documentation or whose application cannot be found.
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 under Article 258 TFEU.
12. A petition will be lodged by the EU Rights Clinic and RIFT before the European Parliament at the same time as this complaint.

Submitted on 21 December 2021 on behalf of the EU Rights Clinic and RIFT.

Anthony Valcke

Founder & Supervising Solicitor

EU Rights Clinic

Justine Wallington

RIFT Admin & Treasurer

Remain in France Together (RIFT)

Brussels and Limoux, 21 December 2021

³ The report can be found here: <https://www.remaininfrance.fr/rift-sounds-the-alarm-bell>

⁴ EU Rights Clinic challenges France’s systematic failure to comply with EU residence formalities: <https://blogs.kent.ac.uk/eu-rights-clinic/eu-rights-clinic-challenges-frances-systematic-failure-to-comply-with-eu-residence-formalities/>