

The progress of the UK's negotiations on EU withdrawal: further written evidence submitted by British in Europe on 1 July 2019

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The progress of the UK's negotiations on EU withdrawal: further written evidence submitted by British in Europe on 1 July 2019

1. **British in Europe** is a coalition of 9 core groups of British citizens living in the EU27, as well as affiliated and associate groups, with a membership of around 30-35,000. There are approximately 1.2 million British in Europe. Nearly 80% are of working age and economically active across the EU27 – or younger. Nearly one third of those is between the ages of 30-49.
2. British in Europe welcomes the Committee's continuing concern over Citizens' Rights and is grateful for the opportunities both to put in this written submission and to provide oral evidence to the Committee.

Executive Summary

The status and rights of UK citizens in the EU27

3. Citizens' rights have not been safeguarded and, in the more likely No Deal scenario, there will be significant variation according to where UK citizens live.
4. If the Withdrawal Agreement ("WA") is ratified, very little has been published in any EU country about how it will be implemented. This lack of information suggests a worrying lack of preparation.
5. In the more likely No Deal scenario:
 - Most EU27 will have a grace period, varying between 6 months to 3 years, during which most existing EU rights will continue in the host country, and application can be made for a longer-term status.
 - In the subsequent period, a distinction is drawn between those with 5+ years residence and those with less. In principle those with 5+ years are eligible for EU Third Country National ("TCN") Long-term residence, with less rights than they had as EU permanent residents. Those with under 5 years, or whose residence does not meet the restricted "continuity" requirements for Long-term status, will be thrown back on national immigration law, with varying and often uncertain consequences. Some countries have adapted their law to meet the special case of UK citizens who were resident before Brexit.
 - All EU 27 countries are very concerned about reciprocity for their citizens in the UK. This has resulted either in express provisions that all rights may be taken away if the UK does not meet their conditions (which are not necessarily confined to citizens' rights provisions), or in no provision at all being made yet for the situation after the grace period, or in such provision as has been made being left very unclear.
6. Outreach by the UK to its citizens in the EU started slowly and was not always informative. It showed an improvement last autumn but dropped off again in many countries earlier this year. Some Embassies, e.g. in Germany, though have been very active. Nevertheless there remains a substantial hard core of Britons who are unaware of their rights or heedless of the need to take action to secure them.

Matters in the "gift" of the UK

7. Whilst the UK's expressed desire to continue existing reciprocal health care and social security arrangements is welcome, the Government should do much more to protect its own citizens in the EU in a No Deal scenario. We examine how this could be done in relation to:

- Returning to the UK with EU or other non-British family members post-Brexit, if this is necessary e.g. to care for an ageing relative;
- Healthcare;
- Social security coordination;
- Home fees for British students living in the EU 27 at UK universities.

European elections

8. There were clearly widespread problems for UK citizens living in the EU who wished to vote in the recent European elections. We produce some survey evidence on the subject. These problems arise in every election and, given that some 60% of us are barred from voting by the 15 year rule (which ought to be abolished), it is scandalous that so many of those who are still able to are prevented from doing so by bureaucratic incompetence or the hurdles involved in registering to vote. Further, UKinEU now face losing access to the democratic process in both their countries of residence and the UK.

Citizenship of the host country

9. Taking citizenship in the country of residence is not a panacea to solve all the issues, although many are contemplating or taking this route because they rely on EU citizenship rights, in particular free movement, for their livelihoods.

Section 1 – The rights of UK citizens in the EU27 post-Brexit

10. In this paper we consider principally the arrangements which will apply to British citizens living in EU27 countries (“UKinEU”) in the event that the Withdrawal Agreement (“WA”) is not ratified by the UK. Where there is anything new to say about implementation of the WA we will do so.

A. EU approach in a No Deal scenario

11. The European Commission (“EC”) has a firm policy of not negotiating over issues covered by the WA – “mini-deals” as it calls them – at least until after a No Deal Brexit has happened. This applies not only at EU level but also at Member State level, and the EU27 have generally fallen in line with that approach. Accordingly all the arrangements which are being, or have been, made either by the EU or EU27 are unilateral.
12. The only new EU legislation impacting on citizens’ rights has been:
- a Regulation¹ to ensure that social security contributions paid, periods of residence completed etc, in the UK before Brexit will continue to be aggregated under the EU system of aggregating social security entitlements: it does not apply to any contributions etc made post-Brexit, which are left for unilateral legislation by the EU27;
 - b. a Regulation² to ensure that anyone who had started an Erasmus+ programme in the UK, and anyone from the UK who had started such a programme, could complete it with funding from the scheme.
13. Last June the EC published a Notice in which it made clear that professional qualifications recognised pre-Brexit under the general EU Directive on mutual recognition would be

¹ Reg. (EU) 2019/500

² Reg. (EU) 2019/499

unaffected by Brexit. This seems to have been an acceptance that in effect rights acquired under the Directive are “acquired rights” and cannot be removed. For reasons which are not clear the Notice does not apply to recognition of the qualifications of lawyers, statutory auditors and others.

14. For as long as they have been in existence British in Europe (“BiE”) and the3million have been calling on both sides to agree to ring-fence any agreement on our rights so that we would not be bargaining chips. The greater the prospect of No Deal the greater has been the importance of this call. The Committee will remember the Costa amendment passed by the House last February which called upon the UK to seek EU agreement to ring-fence the citizens’ rights part of the Withdrawal Agreement in any event. The initial approach of the government to the EU pursuant to that resolution was, frankly, lukewarm and it was met with a response from M. Barnier, rejecting the idea, with reasons most of which did not stand up to scrutiny. Following a meeting with BiE, the3million and Mr. Costa MP, the Secretary of State wrote a much stronger letter which we all greatly welcomed. Unfortunately M. Barnier’s response, dated June 18th, rejected the approach again, largely for the same reasons. This is very disappointing. The underlying philosophy of the EU negotiators seems to be that any discussion of ring-fencing will diminish the prospects of the WA being ratified by the UK. Given recent events in Westminster, the prospect of the WA being ratified must be very remote, and for the EU to sacrifice the rights of 5 million citizens, in particular, 3.6 million EU27 citizens in the UK (“EUinUK”), in the hope of achieving that remote prospect does not reflect well on it.

B. EU27 MSs

15. For the full picture of how each EU 27 country has summarised their no deal contingency plans, please see the link to the European Commission’s comparative tables on residence rights and social security, and text summaries³.

1. Deal – the line-up on constitutive vs declaratory

16. Given the two cliff-edges on 29 March 2019 and 12 April 2019, and the failed attempts to have the Withdrawal Agreement ratified by the UK Parliament, EU 27 have, in the last six-ten months, directed almost all of their attention in the area of citizens’ rights to no deal contingency plans. Thus, while we are aware that how each EU 27 country would implement the citizens’ rights part of the WA were it to be ratified has been discussed internally between the EC and the EU 27, we do not have clear information on the approach of each EU 27 country.
17. As the likelihood of a no deal has grown again, this may not currently appear particularly urgent. However, in the event that the WA were to be ratified, it would become very important indeed for the citizens affected, because Article 18 of the Withdrawal Agreement provides two options for how each EU 27 country or the UK may implement the provisions concerning the status of the citizens under the WA. Article 18(1) provides for a constitutive system, by which citizens would need to make an application to obtain the new status, and would only obtain it, even if resident in the relevant country before end of the transition period, if that application were successful. Article 18(4), on the other hand, provides for a declaratory system, in line with the system applied to EU citizens under the EU Free Movement Directive, Directive 38/2004 (“FOM Directive”) – obtaining the status would be conditional upon a simple registration.

³ https://ec.europa.eu/info/brexit/brexit-preparedness/citizens-rights_en

18. The option in Article 18(1) was provided for because the UK decided that it wanted to implement a constitutive system in the UK for EU citizens.
19. To date, the information that we have suggests that, although most EU 27 countries already have compulsory registration systems, and thus UKinEU are already registered in their countries, the majority of them are likely to opt for a constitutive system, with some exceptions. The exceptions, i.e. those intending to implement a declaratory or simple registration system, tend to be the Southern European countries e.g. Spain (not France), while Northern European countries such as Germany appear to be opting for a constitutive system (officials have publicly confirmed this and the Interior Ministry website also states that an application will be necessary).
20. If the Withdrawal Agreement were to be ratified, close attention must be paid to this issue. It would help UKinEU to make the case for a declaratory system in their host countries if the UK were to change its settled status scheme for EUinUK from a constitutive to a declaratory system.

2. No Deal – brief overview of contingency plans

21. Here we set out an overview of current contingency plans in the EU 27, in order to provide a comparison of the approaches being taken and highlight differences. Above all, what this overview shows is that the treatment of UK citizens in a no deal scenario will be entirely dependent on where they live: in effect, a European postcode lottery.

g. Grace period – duration

22. In the event of a UK exit without a deal, the majority of EU 27 countries will provide for a grace or transition period during which most rights of UK citizens will remain the same, but they will need to apply for a further residence status. The length of these grace periods ranges from the longest in Spain of 21 months and Hungary of three years, 15 months in the Netherlands and one year from Brexit date in France, Luxembourg, Slovenia and Sweden, to the shortest in Germany and Lithuania of 9 months from Brexit date and in Austria of 6 months from Brexit date.
23. Denmark has no specific period, and nor do Estonia, Croatia and Malta, although the latter three say that the transitional period will apply indefinitely (in the case of Malta, it appears that the period may actually be two years), while Romania provides for a period until end 2019, to be adjusted as appropriate. Eleven EU27 propose a grace period until December 2020 (Belgium, Bulgaria, Czech Republic, Greece, Italy, Cyprus, Latvia, Poland, Portugal, Slovakia, Finland).

h. Grace period – rights

24. During the grace period, whatever the length, the majority of EU 27 countries state that UK citizens will keep most of the rights that they now have as EU citizens in their host country: they will be able to continue to reside, as well as to work, to look for a job or to study. Some countries also mention the right to do research. These rights are to be evidenced by a temporary residence permit or residence document. In the majority of countries, there will be no need to apply for a temporary residence permit if UK citizens were already registered and have a residence document issued under the FOM Directive.
25. However, the devil is in the detail as to the meaning of these statements. For example, in Germany, one of the countries where we have been most active in lobbying at national and

regional level, only general information is provided in the EC summary and table but the statement on the Interior Ministry's website was updated and now says:

“During the transition period, UK citizens living in Germany who have up to now been entitled to free movement, and their family members, will continue to have the right of residence. Where this right of residence has provided access to social assistance benefits or child benefit, these will continue to be provided. Existing rights of access to health and long-term care insurance will remain in place.

During the period when no residence permit is required, UK citizens can continue to work on a self-employed or employed basis in any role. Those affected can continue to work in any occupation, regardless of where their employer is based and without having to obtain approval from the Federal Employment Agency.”

26. In other words, the rights that need to be clarified go far beyond the simple right to reside or to continue to work. They include rights to work as employed or self-employed, regardless of where the employer is based, to have access to social assistance or child benefit, as well as to healthcare and long-term care insurance. Moreover, a statement that it will still be possible to look for a job or to study raises further questions: the need to prove to the employer what the long term chances of being able to reside and work in the country are when seeking work, and in relation to studies, the rules applying to recognition of qualifications from the UK and fees applicable to studies.
27. In the table setting out residency rights under EU 27 contingency plans, some countries do provide limited further detail. However, in short, further work by the EC and the UK government is needed to produce a comprehensive checklist of the rights that the EC and the UK would expect to be covered by the EU 27, as well as by the EU27 to provide clear indications on each of those rights before any UK exit without a deal.
28. As regards family members, the majority of EU27 confirm that the same rules will apply to non-EU/UK family members of British citizens as to citizens themselves, provided that the relationship predates withdrawal of the UK from the EU. Latvia again points to relevant conditions set out in FOM Directive, and Malta confirms that the same rules will also apply in the case of children born to or adopted by UK nationals post-Brexit. Some countries e.g. Austria and Denmark, specify that normal third country national rules will apply to family members wanting to join UK citizens after the withdrawal date.
 - i. Implementing legislation: contingency measures during and post grace periods
29. Only Cyprus, Germany and Romania have not yet adopted any contingency legislation as regards residency and related rights either during or post grace period. Germany has however adopted a transitional emergency law dealing with social security, healthcare, citizenship and education. All three state that measures will be adopted and enter into force on withdrawal date but, for example, in Germany, as yet, no draft has been made public.
30. All other EU countries have adopted or are in the process of adopting legislation on residency and related rights, which will in general enter into force only on the date of withdrawal of the UK from the EU, and at least deal with the position during any grace period. But in some countries, there is no legislation setting out clearly the position post grace period, for example, in Denmark, and in other countries it may still be subject to change as the situation evolves (e.g. Finland and Sweden) or on grounds of lack of reciprocity, e.g. France and Spain.

j. Countries that do not have a clear (or entirely clear) position for post-grace period

31. Germany has not specified exactly what long-term status UK citizens will need to acquire: it states in the EC table that UK citizens will simply default to third country national status but the rules may be partially adapted to the specific situation. Germany does confirm that those with over five years' residence would be able to apply for EU Long term residence under the EU Long Term Residence Directive 109/2003 ("LTR Directive"), or a national residence permit, the latter in principle after 5 years of residence.
32. Cyprus has also not specified what long-term status UK citizens in Cyprus will acquire. A policy paper has been prepared and a law is envisaged that would protect British citizens by implementing unilaterally as far as possible the provisions of the WA.
33. Denmark has not yet decided what long-term status UK citizens in Denmark will acquire but this will take into account the UK-EU negotiations and preferably be based on an EU-wide coordinated approach. Belgium simply states that no decision has been taken yet.
34. While Finland and Sweden have some solutions in place, these solutions appear not to be final as further measures or decisions appear possible.
35. The three latter, Belgium, Finland and Sweden, all state that EU long term residence can be applied for in the event of more than five years' residence (subject in Sweden's case, to parliamentary approval of this option).

k. Countries that have provided more generously post-grace

36. In this context, it is important to make a distinction between those with less than five years' residence in the host country, and those with five years or more, who are likely to be covered by the LTR Directive which applies in 25 Member States (it does not apply in Ireland or Denmark) to third country nationals.
37. For those with less than five years' residence, the position is more precarious than for those with five years' residence. Estonia appears favourable, as both those with less than five years and those with more than five years' residence who are legally residence before Brexit appear automatically able to obtain permanent residence or a temporary residence permit leading to permanent residence. However, there may be some conditions attached e.g. language requirements for those with less than five years. Romania will simply convert any registration certificates into a temporary residence permit of five years. A number of countries have provided that the temporary permit or registration documents that British citizens hold during the grace period or already hold under the FOM Directive will be replaced by residence permits in the common format under Regulation 1030/2002: Bulgaria, Greece, Croatia, Poland, Portugal and Spain. Poland will grant a national temporary residence permit valid for five years, the only condition being legal residence in accordance with the conditions of the FOM Directive prior to Brexit. Portugal states that registration certificates under the FOM Directive will be converted under facilitated conditions and residence permits then granted according to the number of years spent in Portugal. Malta appears to envisage granting a permanent status immediately before the end of any transition phase and then that status will be retained indefinitely until it ceases to be stipulated in the relevant legislation (although this raises a query about when that might occur).
38. For those with more than five years' residence, there will be two potential routes in some countries: an EU long term residence or a national permanent residence permit.

39. As regards national permanent residence, as explained above, Estonia provides that all UK citizens who have more than five years' residence will obtain national permanent residence permits. Spain provides for an automatic exchange from EU permanent residence status as an EU citizen to biometric Third-Country National Identity Cards (this appears to be EU long term residence and/or Spanish national permanent residence combined). In Greece and Austria, the application appears to be subject simply to a five years' continuous stay and examination of public order and security reasons: however, in the case of Greece at least, it is unclear whether other conditions such as minimum income and healthcare provisions must be fulfilled. The Netherlands states that during the grace period, British citizens will be invited to apply for a new definitive residence permit according to the applicable conditions applying to EU citizens: the basis on which the permit will be assessed is more favourable than for TCNs as EU conditions will apply but the status granted is simply TCN status e.g. the right to reside and work is forfeited after a six months' absence from the Netherlands.
40. As stated above, in Portugal, current registration certificates under the FOM Directive will be converted under facilitated conditions. In Hungary, national permanent residence will be granted on the basis of three years' prior residence (a reduction from the usual 5 years), while in Finland, this is four years.
41. As regards the LTR Directive and EU long term residence status, two countries, France and Greece, provide that this application will not be subject to the integration conditions that may be imposed under the LTR Directive. Italy states that British citizens with five years' continuous residence will be entitled to a long term residence permit and that it will apply only some of the conditions of the LTR Directive to applications by UK citizens (they have slightly modified the rules on periods of absence from Italy permitted for those applying for LTR status). Austria appears to be waiving German language requirements while applying the other usual conditions for LTR status. All other countries (except Poland, Denmark and Ireland, see below) appear to be prepared to grant EU long term residence status subject to the usual conditions of the Directive but this needs to be confirmed definitively.
- I. Countries that have provided less generously post-grace
42. France and the Czech Republic both state that UK citizens will simply default to third country national status. Luxembourg also provides that, for those with less than five years' residence, they will apply for one of the usual TCN residence cards according to their status. However, the detail is more complex. In France, for example, as regards temporary national permits, the third country national regime will apply with more favourable conditions.
43. For those with more than five years' residence, again the option is sometimes between EU long term residence and national permanent residence permits.
44. As regards national permanent residence permits, France and the Czech Republic state that, if applying for national permanent residence, the third country national regime will apply without more favourable conditions for British citizens. However, the Czech Republic also states in the EC table that those with permanent residence certificates will be considered as possessing the right of residence or permanent residence: it is unclear as to whether this merely relates to the grace period. Otherwise, some countries simply do not offer national permanent residence permits to third country nationals, but offer EU long term residence. These countries are Italy, Romania, Lithuania (it appears from the EC table), Luxembourg, and Austria. Other countries appear simply to be applying the usual conditions for third country nationals to acquire such

permits and the average time period of five years: for example, Croatia, Latvia, Slovenia, and Slovakia.

45. Some countries apply more stringent conditions than others for national permits and do not intend to apply more favourable conditions to British citizens. For example, while the average period of residence for national permanent residence in the EU 27 is five years, Denmark only offers it after 8 years of legal residence. Sweden grants national permanent residence subject to having held a national temporary residence permit for a period e.g. as an employee or student and the length of time required varies according to the grounds for the application. Poland will apply tailored national permanent residence status subject to conditions: permanent residence or 5 years' legal and uninterrupted residence as understood under LTR Directive, a source of stable and regular income and health insurance.
46. Finally, as regards the LTR Directive, Poland will apply this but with a Polish language requirement. However, Denmark and Ireland do not apply the LTR Directive as they both opted out from the EU common immigration regime, along with the UK.

3. Detailed papers on the main countries hosting UK citizens – Spain, France, Germany, Italy, Greece and Luxembourg

47. More detailed papers on the main countries hosting UK citizens – Spain, France, Germany, Italy, Greece and Benelux - as well as a selection of other countries in the EU 27 are attached as appendices to this document. They have been prepared by British citizens living in those countries, and give a more human perspective than the EC tables.

4. Common issues arising from the above

k. Uncertainty

48. Although it is now 3 months after the original date of Brexit, a problem facing almost all UKinEU is uncertainty. Some countries (e.g. Germany) have published no draft legislation for our core rights during or after a, sometimes brief, grace period. Others (e.g. Italy) have published plans and even laws, but these leave many important practical questions unanswered. Still others (e.g. France and Spain) have passed quite detailed laws but made them conditional on reciprocity by the UK, and such reciprocity is not necessarily confined to citizens' rights. So if there is not reciprocity on, say, air transport, Spain can withdraw the rights conceded to UK citizens and the whole pack of cards comes tumbling down.

l. The need for reciprocity

49. With few exceptions, the principal concern of Member States is about the status of their own citizens in the UK. Reciprocity, or the desire to see that their own citizens are treated no worse than the UK's in their country, is a key demand. BiE and its member groups have been told this again and again.
50. As stated above, countries such as France and Spain have provided for their legislation to be disapplied if their particular reciprocity conditions are not met. Countries such as Portugal, Austria and Hungary have also made reciprocity a condition of the rights granted, whilst others such as Germany and Denmark have delayed legislating at all for the situation after the grace period, suggesting that they may also tailor their eventual law to ensure reciprocity.
51. Where does this concern come from? Although the UK regards itself as having made a "generous offer", the "hostile environment" policy developed by Mrs. May as Home Secretary

and its manifestation in the Windrush generation scandal have indelibly affected the UK's reputation for fair dealing, and led to diminished trust by EU governments.

52. The perception that the UK's natural tendency is to restrict rights was reinforced by the decisions, which can only be characterised as mean, to place further limits on the rights of EU nationals in a No Deal scenario compared with the situation under the WA. Family reunification rights were restricted and the right of appeal against an adverse decision was removed.

53. EU distrust is not reduced by the uncertainty of the legal position of EU in UK after Brexit. Whilst there are laws in place at present governing their future status and rights, the purpose of the Immigration and Social Security Coordination Bill is to replace these laws with a new set, to be included largely in secondary legislation. The lack of primary legislation and the absence at this stage of even draft regulations/rules setting out the new order is also commented on in our discussions with national governments. Lack of trust in the UK among EU countries has been further reinforced by some of the rhetoric in the Conservative leadership contest.

m. Loss of free movement

54. Whether or not the WA is ratified, UK in EU will only be able to reside, work, study and be self-employed in their host state. This will affect many Britons (e.g. interpreters/IT consultants/musicians/other professionals etc.) whose livelihoods depend on being able to work around the EU. UK in EU will be living in the single market, but tethered to only one Member State. It would be as if EU citizens resident in one part of the UK (e.g. Northern Ireland) could only live, study, work and set up a business there.

55. Member States are unable to make individual bi-lateral agreements with other EU27 countries to ensure the right of UK citizens to reside in their State but work in another EU country. This is a huge problem for cross-border workers and those who are self-employed in small businesses. These people, as individuals not covered by the four freedoms, will have to apply to a country that they are not resident in for the right to work there, whether temporarily or more long-term.

56. Those who succeed in obtaining EU TCN long-term resident status will have some limited mobility rights as a result, but these are very limited compared with their rights hitherto – for example, priority can be given to EU nationals in relation to employment. And paradoxically, if their host Member State relaxes the EU conditions for granting this status, even that limited mobility is taken away.

n. Drawbacks of EU TCN long-term residence

57. Most countries have accepted the Commission recommendation to grant EU TCN long-term residence status to UK in EU with 5+ years residence. However:

- This seems to mean different things in different countries. Some have simply adopted the EU Directive on the subject, some have their own long-term residence scheme and in some it is possible to apply for either. The rules for each vary.
- The rules limiting absences from the host country can operate retrospectively to deprive long term residents of that status. For example, someone with EU permanent residence pre-Brexit might have studied or taken a job in another country for 18 months without loss of status: however that perfectly lawful absence will prevent that person from getting TCN long-term residence status because permitted absences cannot exceed 6 months in any of the previous 5 years.

- Similar rules make the status easy to lose. As third-country nationals, UKinEU can only be absent from the EU for 12 months without losing their status (i.e. not just their LTR status, but *any* right to live in their home). If they want to return, they will have to re-apply as though they were TCNs who had never been EU citizens. This will impact particularly on young people who were born in their host state and go away to study or travel, on those who work overseas and those who need to be absent in the UK to look after an ageing parent. In the WA the negotiators increased the length of permitted absences to 5 years, precisely because of the difficulties that such limited time limits create.
- Rules restricting employment to nationals of the host state or to EU citizens may be applied, so that Britons working in such jobs may lose them. This is a real concern for the many UK nationals teaching English in public institutions.

58. In Spain the thousands of Britons who are EU family members (married or children of Spaniards or other EU citizens) will not be able to roll over EU long-term residence to EU family member long-term residence. They will have to start again as short-term residents. It is not clear whether this will also apply in other countries.

o. Problems for those resident for less than 5 years

59. Those resident in their home state for less than 5 years include not only those who emigrated from the UK recently but also thousands who first exercised their right to move freely around Europe long ago but happen to have been in their present host state for less than 5 years.

60. The Commission had no recommendation in relation to those who have resided for less than 5 years, and as a result the situation varies from one country to another. Some are simply applying their national immigration law for short-term residence, so that in order to continue to live in our own homes we have to satisfy the conditions which newcomers from outside the EU have to meet to get a visa. Others have created a special category into which we go automatically. Very often the conditions British citizens have to meet are still unclear, as are the rights that go with whatever new status they are given. This lack of clarity means that, even 3 months after the original Brexit date, many UK citizens do not know for certain whether they will be able to stay in their own homes.

p. Areas where a unilateral approach does not work

61. The three areas of reciprocal health care, social security coordination and mutual recognition of professional qualifications are the most important citizens' rights issues where a unilateral approach simply does not work. They are all covered by the WA, and our best hope is that the new UK government will continue to support, and the EU drop its opposition to, ring-fencing the rights it preserves. The alternative of a new agreement at EU/UK level as part of a free trade agreement is far less satisfactory because it leaves us in limbo for a further indefinite period whilst the agreement is negotiated. Although the limbo in which we have been in the 3 years since June 2016 has caused a huge amount of anxiety, at least we have maintained our existing EU rights during that period. In this new limbo we would have already lost those rights. The alternative to EU/UK agreement on these matters is bilateral UK/EU27 agreements.

62. BiE has welcomed the Healthcare (EEA & Switzerland Arrangements) Act 2019 which enables this to happen in the field of healthcare (though see para. 91 below on the interim position for S1 holders). It is to be hoped that Member States will be prepared to reciprocate, and there are signs from some countries (such as Italy) that they are.

63. In social security coordination the Government's proposal is that the existing EU arrangements will be continued under the EU (Withdrawal) Act 2018, but it is taking powers under the Immigration etc Bill to vary these in the case of No Deal. Whether these powers would be adequate to enable bilateral agreements to be made remains to be seen. Again, it is hoped that this will be reciprocated either at EU or Member State level. The EU has shown itself more open to continued discussion of reciprocal arrangements in this field. The UK's present proposal is to continue existing arrangements until the end of 2020⁴, but BiE strongly urges the UK to seek a more ambitious, permanent arrangement for those who moved before Brexit.
64. On the mutual recognition of professional qualifications, see para. 13 above for the EU position. The UK has said that all recognition decisions made or applied for before 29 March 2019 will be valid: we may have missed a statement extending this to any new Brexit date. Cooperation over the continued monitoring of mutual recognition will, however, be required. Many such qualifications are dependent upon annual renewal, with continuing professional development being monitored by, and fees being paid to, the home regulator, all of which requires cooperation to ensure compliance.
- q. UK outreach
65. BiE approached the Government in early 2017 and, although engagement was slow compared with the European Commission, we have had regular meetings and calls with civil servants from DExEU since the spring of that year, including extremely useful regular debriefs during the negotiation of the citizens' rights part of the WA. Apart from a passing meeting with a junior minister in the department, attempts to meet ministers were initially ignored. Over the last year or so, however, there has been a paradigm shift in the Government's engagement with us, and we have had meetings with civil servants from other departments as well, with ministers from DExEU, the FCO and DHSC, as well as a meeting with the Secretary of State DExEU in April this year.
66. The Government's primary interface with its citizens in the EU27 is the network of embassies. The picture here has been quite varied but, again, engagement shifted up a gear last autumn. The principal means of engagement have been the "Living in" guides on the FCO and Embassy websites and "town hall" meetings run by Ambassadors or other Embassy or consular staff.
67. The "Living in" guides are fairly primitive in terms of presentation and information is sometimes given in a form which is not always helpful to a British national (e.g. a link to a national government website in the local language) and sometimes in language which is too generalised to be of real assistance.
68. The town hall meetings are a good way of reaching out to British citizens, particularly in countries where there are concentrations in particular areas, though some have been criticised for inadequate notice and being held during working hours. Particularly in the earlier days, the desire of the embassies to put across the party line, however unrealistic the expectation that the WA would be ratified, often seemed more important than imparting useful information, though embassies varied in that respect. BiE noticed a significant drop-off in outreach events post-April, at a time when they were needed more than ever.

⁴https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792710/Citizens_Rights_-_UK_nationals_in_the_EU.pdf para. 4.

69. The sad fact is that a very significant proportion of UK citizens living in the EU27 remain ignorant of their situation and their need to do anything to regularise it. Many of these people have lived in their adopted country for decades and understandably cannot accept that their status is at risk. For example, registration as an EU citizen is a prerequisite of obtaining further rights under almost all EU27 contingency plans, yet, in France, where registration is of course voluntary, less than 20% have so far obtained a residence card. Embassies such as that in Rome are considering imaginative plans on how to get to the “hard to reach”, but given that we are only 4 months away from a probable No Deal Brexit, it is essential that a major further push is made by the FCO to provide further information.

r. Discrimination against British citizens in the EU27

70. In contrast to reports of unpleasantness suffered by many EUinUK following the referendum, BiE has received virtually no evidence of corresponding problems being experienced by British nationals.

71. However, at a practical level, there have been some problems in the employment field. Just one example, the report from Belgium, shows head-hunters being asked by clients not to recommend British candidates; the Secretary General of a European association being told that he will lose his job soon as the ‘large member state countries’ want to have their own people in the position; that an NGO in Brussels stopped accepting job applications from British candidates immediately after the referendum because of fears that paying a visa for them would be too costly in the long run.

s. Brexit fatigue

72. We have been asked to comment on “Brexit fatigue”. It is impossible to generalise about the anxiety and uncertainty that UKinEU have faced since the UK EU referendum and our continued existence in limbo. It ranges from acute anxiety and depression, to trying to ignore the problem and hoping it will go away. For all UKinEU, the key issue lies in the uncertainty and the inability to plan for the future.

t. Citizenship applications

73. Application for citizenship of one’s host state should not be seen as a panacea. In some countries (e.g. Spain, Austria, the Netherlands and Germany, post Brexit) it would be necessary to renounce British citizenship as dual nationality is not allowed or only allowed in very limited circumstances. Whilst some people have been prepared to take that step, for many it is a step too far.

74. In most countries it is a process which is either difficult for many (e.g. where a language test is required in a country with a difficult language, a particular problem for older UKinEU), or requires a lengthy residence in the country (10 years in Spain) or very slow (e.g. Italy where the legal time limit for deciding an application has just been extended to 4 years).

75. Despite this most countries report an increase in citizenship applications by Britons. This is also increasing in the length of time for those applications to be processed. In some countries, the increase is significant e.g. Germany.

Section 2 – issues within the “gift” of the UK

A. Family Reunification

76. After Brexit, a British citizen in the EU wishing to return to the UK with non-British (whether non-EU or EU) family members will face the UK’s stringent domestic immigration regime for those family members. If the UK introduces an Australian-style points regime, this will make it even more difficult for British citizens to return to the UK with their non-British family members.
77. When this group exercised their rights to live, work and build families in another EU country, they had a legitimate expectation of rights for life to bring their family with them if they returned to their country of origin in accordance with EU case law⁵. Instead, they find themselves retrospectively subject to a different and harsher set of rules. EU citizens currently in the UK will not face this problem if they want to return to their country of origin with their family.
78. Paradoxically, if the WA were actually ratified, they would also have lesser rights to family reunification when they return to the UK than in their host EU 27 country. The WA does not cover the right to return to one’s country of origin with family members, as this right is considered to be a matter of national law, but does cover family reunification in the host country.
79. Regardless of whether the UK leaves the EU with a deal or not, family members of British citizens will only be eligible for pre-settled or settled status if:
- the British citizen exercised free movement rights in an EEA host country immediately before Brexit or end of transition date, or had acquired the right of permanent residence in the EEA host country;
 - the British citizen has returned to the UK before Brexit or end of transition date or any grace period proposed by the UK government;
 - the family member and British citizen resided together in the other EEA member state immediately before Brexit or end of transition date and that residence was in accordance with EU law.
80. This leads to a situation where most UKinEU wanting to care for an elderly British parent have only one potential choice: to move their parent to their country. Take the example of a British citizen in Germany. In a no deal scenario, the availability of this choice is not guaranteed and will depend on whether German immigration rules allow it. In practice, this may not even be a viable choice, if the health or wishes of the elderly parent do not allow it. However, that British citizen cannot return to the UK, joined by their economically active German spouse, to care full-time for their parent in their own home in the UK because that British citizen would thus be unable to reach the income threshold under the Immigration Rules 2012 in order to sponsor their German spouse, and the German spouse would not be able to join the British citizen simply by showing a previous salary of over the income threshold and a job offer in the UK for over that amount.
81. Even where the British spouse did not give up work to care for the elderly parent, the income threshold would remain a barrier to those moving at short notice back to the UK to look after an elderly parent. Unless the couple had continuing income from other sources such as

⁵ *R v IAT and Surinder Singh ex p Home Secretary*, ECJ No. C-370/90, 7.7.1992.

property/pensions, the British spouse would have to show that (s)he has a job offer in the UK over that income threshold. If self-employed, it would be even more difficult to prove that they reached the threshold, even if they had done so in the past in their host country, given the very strict documentary evidence requirements. And for those on an income lower than £18,600 p.a. or who cannot prove income over that threshold, the choice would be stark: between the needs of an elderly parent and being separated from their spouse.

82. It is entirely within the gift of the UK Government to end this injustice and ensure that British citizens are able to return to the UK with their families. The UK Government did issue a policy paper on “Citizens’ rights: UK nationals in the EU” on 4 April 2019⁶ This improves the situation in that it provides for a grace period until 29 March 2022, but does not solve the problem and does not provide for “sufficient continuity after exit to allow families to plan with confidence”⁷. It might help e.g. someone in their fifties whose elderly parent in their eighties becomes sick or unable to look after themselves before that date, but not those whose parents are still fit or the vast number of younger British citizens in the EU (the largest group is between 30-49). This issue is not only causing anxiety among British citizens in the EU but also their elderly relatives who are both resident and can vote in the UK.

B. Pension uprating and social security

83. As the Committee will know, the UK has a policy of not inflation-proofing the pensions of UK pensioners resident abroad unless it is compelled to do so by international treaty. While the UK has been in the EU it has been obliged by EU regulations to uprate the pensions of UK pensioners living in the EU. This obligation falls away if there is a No Deal Brexit⁸. BiE has long been calling for the UK to confirm that it will continue to uprate for all those living in the EU27 who have contributed to a UK pension prior to Brexit. The justice of this claim is overwhelming: when these people contributed to their pension and/or retired to the EU27 they were clearly entitled to uprating, and they did so in the legitimate expectation that this right would continue. Many UK pensioners in the EU live on their state pension alone or their pension supplemented by meagre other income, and have already been very badly affected by the value of Sterling falling by over 20%⁹ since the beginning of referendum year.

84. The UK’s proposal is to uprate these pensions this financial year, but thereafter only “subject to reciprocity”¹⁰. At a meeting on April 29th BiE asked DWP officials two questions about this policy but have yet to receive a reply. The questions were:

- What does “reciprocity” mean in this context? Does it mean that the UK will uprate for its pensioners living in EU countries which will, as a matter of national law, uprate for their

⁶See paragraphs 11-13 of the paper:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/792710/Citizens_Rights_-_UK_nationals_in_the_EU.pdf

⁷ See paragraph 13 of the paper referred to in note 6 above.

⁸ The WA preserves the EU law requiring uprating.

⁹ Sterling bought 22% more euros at the beginning of 2016 compared with the date of writing (£1=€1.358 vs £1=€1.116).

¹⁰ DExEU policy paper December 6 2018, footnote 4 -

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/790570/Policy_Paper_on_citizens_rights_in_the_event_of_a_no_deal_Brexit.pdf

own pensioners living in the UK? Or does it mean that the UK will only uprate if the other country agrees to sign a binding treaty on uprating?

- If the UK is insisting on bilateral agreements, can it not at least extend the present guarantee of uprating by a further two years to give it time to negotiate such agreements but to create a little more certainty for UK pensioners while it is doing so?

85. BiE has in the past published a paper critical of the UK policy of requiring reciprocity, but that criticism has even more force now. The Commission has recently published a comparative table of EU27 national proposals for No Deal social security arrangements¹¹. One of the questions is, “Will old-age pensions based on pre-withdrawal periods continue to be exported to the UK?” The answer from all countries was an unqualified Yes, save for Croatia which said ‘Yes (based on reciprocity)’. Whilst exporting and uprating are not identical, if a country was not going to uprate one would expect the response to have been qualified. So the UK is insisting on 26 countries signing an agreement to do something that they do anyway, simply to ensure that the UK does something which it could do voluntarily. And the bargaining chips for this pointless negotiation are the UK’s own pensioners.

C. Healthcare

86. Reciprocal healthcare is another area where, at least in the long term, unilateral provision is not possible. The recent Healthcare (EEA & Switzerland) Arrangements Act 2019 is very welcome, as is the intention underlying that Act of trying to replace existing healthcare arrangements by agreement with the EU or Member States. However, making such agreements will take time and the UK does have a responsibility to see that those for whose healthcare it is presently responsible are not abandoned in the event of a No Deal Brexit.

87. The announcement on government websites at the end of January that the S1 scheme (reciprocal healthcare in the EU paid for by the country responsible for the patient’s pension) would in principle not continue in the case of no deal caused an unprecedented volume of anxious messages on BiE groups’ social media, ranging from the seriously worried to the suicidal. For that reason in February BiE called upon the Government to commit unilaterally to continue to make payments under the S1 scheme on condition that the EU27 countries provided the treatment.

88. On March 19th the DHSC announced¹² that it would fund healthcare for UK nationals and others for whom the UK is responsible “who have applied for, or are undergoing, treatments in the EU prior to and on exit day, for up to one year”. This very small step forward for those two categories abandoned responsibility for tens of thousands of pensioners who are not ill at Brexit and leaves a lot of questions unanswered.

- What about those who only discover that they have a serious condition shortly after Brexit? They will be every bit as vulnerable as those who have already started treatment but, on the basis of this announcement, will get no help at all from the UK. They too moved to the EU relying on the fact that they could face old age without having to worry about medical bills.

¹¹https://ec.europa.eu/info/sites/info/files/overview_of_national_measures_in_the_area_of_social_security_coordination.pdf

¹² HCWS1429

They too will struggle to get health insurance at all or if they can get it the premiums will be loaded because of their age.

- And what of those whose treatment is to be funded when the year is up?
- It is not clear what “applied for” treatment means in this context. How does one show a connection between treatment received post-Brexit and some prior “application” in countries where there is no formal application process? Is it enough that you have consulted your GP about a concern that you have? At what point does the causal connection between that consultation and later treatment break down?
- What happens in those countries where the possession of an S1 certificate, which will no longer be valid, is essential for enrolment in the health service?
- How on earth is this ill-defined scheme to be understood by hard-pressed administrators in surgeries and hospitals over 27 different countries? And if they do not know how to administer it, is there not a massive risk that they will either refuse treatment or insist that the patient pays?

89. The ministerial statement clearly recognises the inadequacy of the scheme, and that it may well force British citizens to leave the homes they have made for themselves and their families, as it goes on to say “Should UK nationals face changes in how they can access healthcare, they may use NHS services if they return to live in the UK.” This is no more than a restatement of the obvious right of any UK citizen to NHS treatment if they live in the UK. And it is all the crazier because the evidence is that it costs the UK about half as much to pay EU countries to treat its S1 holders as it would cost if they all had to be treated in the UK under the NHS.

D. Student Fees and Finance

90. The UK Government recently confirmed in its paper on UK nationals in the EU¹³ that British citizens living in the EEA would, for a limited period of seven years, continue to benefit from home fees and student finance support in the same way as British citizens resident in England. Beyond that they will be liable to pay international fees.

1) Substantive issues

91. It is unclear why British citizens living in EEA countries before Brexit should not continue to be granted home fees and student finance in the same way as other British citizens in the UK without a time limit. For example, other countries, such as Canada, extend home fees to their citizens living abroad. The Memo of Understanding dated 8 May 2019¹⁴ between the UK and the Republic of Ireland on the Common Travel Area confirms the continuing rights of Irish citizens post Brexit to access education and student support in the UK on the same terms as British citizens in the UK.

92. British students and their parents living in EEA countries arguably had a legitimate expectation that this would continue and there are also advantages for the UK, as it leaves the EU but seeks to remain outward-looking and open.

¹³ See paragraphs 14-17 of the “Citizens’ rights – UK nationals in the EU” paper referred to in footnote 6 above.

¹⁴ See paragraph 12 of the Memo of Understanding:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/800280/CTA-MoU-UK.pdf

93. In any event, if the UK does not decide to continue the current position, British in Europe considers that the UK should either (1) offer to continue home fees and student finance for a period of 15 years or (2) offer to continue home fees indefinitely but without access to student finance. The former period is not proposed randomly: this would take into account the expectation that all parents and their children resident in the EU 27 would have had prior to the 2016 Referendum that their children born before that date would have had the right to study in the UK at home fee rates. 15 years would represent the number of years within which a child born before the Referendum would in the normal course have started University. Given that parents begin to save and plan for their children's future education from birth, this would acknowledge the legitimate expectation that parents would have had before the Referendum that their children would be able to attend university in the UK in future.

2) Implementation issues as regards the policy announced in the UK government paper

94. There are a certain issues that need to be clarified in the UK government paper.

a. Residence requirements

95. Paragraph 14 of the paper needs to be updated to reflect confirmations that we have received concerning, in particular, that there is no residence requirement i.e. that the person covered by whichever student fees rules the UK decides to apply, is not required to have lived in the UK, or indeed, more restrictively, in England, in the past. Further, it should also be clarified that any UK citizen resident in the EU 27 pre-Brexit would be covered by the policy, regardless of their place of birth, as long as they are a British citizen.

b. Point about deal and no deal wording

96. It is also unclear, if the UK maintains its position that the right to home fees and student finance should be time-limited, how that time limit will apply. First, the paper states that the starting date will be the actual exit date. Second, if that date were to be October 2019, presumably that would mean that all students who start University by the academic year starting September/October 2026 would be covered, but this needs to be confirmed. If the date were to be later or in 2020, the start and finish date of the seven year period would be less clear.

c. Access to education across the UK

97. There are of course different processes on student fees in England, Scotland, Wales and Northern Ireland, but this is an approach that may be considered in tandem by all four countries of the United Kingdom.

Section 3 – The European elections

98. As noted above, there were clearly widespread problems for UK citizens living in the EU who wished to vote in the recent European elections, and this is a perennial problem for overseas voters in all UK votes. We carried out two rounds of surveys on the matter, one in the week leading up to the elections which was ad hoc, and another formal survey which we launched for just over one week post the elections. During the survey, we received 509 responses. 166 of those were not registered to vote mostly because no longer eligible due to the 15 year rule. 343 were still registered of whom the largest group, 275, were unable to vote due to postal vote or proxy issues, while 22 were not sure whether their vote was actually registered for the same

reasons. Only 46 reported that they were ultimately able to vote, generally after chasing in order to sort out problems concerning their registration or voting papers.

British in Europe

1 July 2018

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ANNEX 1 - AUSTRIA: No Deal Contingency Plans

Background

The UK population is around 10,000, of which 4000 are in Vienna. Many of working age, including for international organisations – UN and OSCE.

The Austrian government passed no deal contingency legislation on 25 March 2019. The Embassy communicates UK government Brexit information on all the usual channels. The Embassy has held outreach meetings throughout the country, some with representatives from DExEU. Austrian government websites have information about post-Brexit rights in English.

Key rights guaranteed for Britons legally resident on Brexit day

Continued residence for rights holders and existing family members; to work without a work permit; to study.

Guaranteed rights will be subject to reciprocity with those granted to Austrian citizens living in the UK.

Administrative procedures and conditions prescribed by the legislation

Grace period: all British citizens must apply for a new residence permit after Brexit, and applications must be made within 6 months of Brexit day. They will however continue to be legally resident until a decision has been made on their application.

Residence cards: those resident for less than 5 years will apply for a Rot-Weiß-Rot – Karte plus' residence permit, valid for a year (renewable). Those resident for more than 5 years will apply for a permanent residence permit ('Daueraufenthalt – EU').

Application procedure - short term residents (<5 years): examination of the application will essentially be restricted to checking whether the applicant poses a risk to public order and security. Applicants do not have to provide evidence of German language skills when applying for 'Rot-Weiß-Rot – Karte plus' residence permit.

Application procedure - long term residents (>5 years): applicants will need to provide proof that they have been legally resident for at least 5 years and will have to meet the general requirements for the granting of a residence permit under the Settlement and Residence Act. These include providing evidence of adequate accommodation, comprehensive health insurance and sufficient financial resources, as well as verification that the applicant poses no risk to public order and security. Applicants do not have to provide evidence of German language skills when first applying for the permanent residence permit. Permanent resident rights are valid indefinitely but it is recommended to renew the card every 5 years.

Cost: 160 euros for a short-term residence card (145 euros for children under 6); 210 euros for a long-term residence card (195 euros for children under 6).

Health care

The situation is not entirely clear but the contingency legislation states that access to health care in a no deal Brexit would be as third country nationals. This means that benefit entitlement from the Gebietskrankenkasse (based on S1, E106, E109 or E121 certificate) would stop and those whose competent state is the UK could access health care in Austria only

- as a “private” patient, or
- by concluding a voluntary insurance with the Gebietskrankenkasse, or
- by taking up an employment in Austria.

Citizenship

Austria does not allow dual citizenship except for children with one Austrian and one non-Austrian parent. Some British citizens have renounced their British citizenship accordingly. Foreign Minister Karin Kneissl has said that Austria would allow its roughly 25,000 citizens living in Britain to acquire British nationality, making a new exception to the ban.

ANNEX 2 - BELGIUM: No Deal Contingency Plans

Background

Belgium has a complex 3-tiered political structure within a tri-lingual country which complicates matters. The **UK population** in Belgium is around 25,000 with one third concentrated in Brussels and the majority of Britons are of working age or younger. Since June 2016 around 3,200 have received Belgian nationality. Currently around 90 Britons are gaining Belgian nationality per month (down from 109/month in 2017). Belgium has been reasonably proactive in moving forward with legislation to protect the rights of British citizens, the complexities of the political landscape means that multiple agreements have to be made with multiple authorities depending on their competencies. They have moved forward on the basis of reciprocity with an eye on how Belgians in the UK are treated.

Draft/adopted contingency legislation:

- a **grace period** in the event of a no-deal up to 31/12/2020.
- all **UK nationals resident in Belgium before withdrawal** will be able to remain in the country on their current residency cards and are strongly advised, after 5 years, to apply for a long-term residency (D card) status.
- **UK nationals arriving after withdrawal** (deal or no deal) will have their applications treated as third-country nationals. Exceptions are made for those joining relatives who have the right to long-term residency, including partners where the marriage is recognized in civil law.
- in terms of **recognition of professional qualifications and worker mobility**, after the grace period agreements will need to be made between Belgium and the UK.
- the situation re **university education for UK nationals** is unclear with differences between regions, possibly having to pay in Flanders but not Wallonia.
- **old-age pensions** based on pre-withdrawal periods will continue to be exported to the UK.
- existing EU rules will continue to be applied to reimbursement requests by Belgium towards the UK concerning **healthcare costs** or costs related to **unemployment benefits** for frontier workers, pending on withdrawal date. New claims involving the UK and dealt with by EU27 Member States, existing EU rules will continue to be applied to post-withdrawal reimbursement requests and for costs for pre-withdrawal medical treatments.
- existing EU rules will continue to be applied to **costs for planned/necessary medical treatment** ongoing on withdrawal date and that could not be interrupted.
- existing EU rules will continue to be applied to post-withdrawal reimbursement requests for **unemployment benefits** provided by the UK pre-withdrawal to UK-residing frontier workers working in an EU27 Member State.
- in terms of **social security coordination**, it will be possible to export cash benefits to the UK (other than old-age pensions) that are based on pre-withdrawal situations such as (a) sickness (b)

maternity/paternity (c) invalidity (d) survivors' (e) accidents at work and occupational diseases (f) unemployment (g) pre-retirement and (h) family benefits

- the grace period is also key for **post-withdrawal entitlements**. If a UK citizen comes to live in Belgium he/she will need to join the national health care system by taking out health insurance. They will also be able to enjoy UK social security benefits under Belgian law until the end of the grace period.

- During the grace period, the Belgian government will allow pensions to take into account **aggregate post-withdrawal periods** of insurance, work or residence in the UK.

Worries for UK citizens in Belgium

- Uncertainty about rights and worries about reciprocity: 'Under a no deal, rights are protected up to the end of 2020, unless the UK doesn't reciprocate and then no one knows what will happen.'

- There is anecdotal evidence of problems with treatment of UK citizens since the Brexit referendum such as headhunters not being asked to recommend British candidates and NGOs no longer accepting British candidates.

- The complexity in the Belgian political and legal system and poor communication leads to multiple issues. A particular issue that may be unique to Belgium is that of the so called "Special ID" card issued to EU officials and their dependents. This means that a person may have been in Belgium for 30+ years but not one of those years counts towards residency years – this has been going through the courts but there is still much intransigence in the system. People have also been advised that if going through the Flemish courts does not work then try through the French system.

- The gatekeepers for citizenship applications are the communes and the experience varies very much from one commune to the next – some very helpful and some actively blocking.

ANNEX 3 - ESTONIA: No Deal Contingency Plans

Background

Estonia has a small population number of UK nationals of 1335, mostly of working age or younger and a small retired population of 36 individuals.

The **Riigikodgu 21/03/2019** passed the **Act on Amendments to the Citizen of the European Union Act** that regulates the conditions for residing in Estonia after Brexit for the citizens of the United Kingdom and their family members in the event of a deal or a no-deal Brexit.

Estonian government no-deal contingency plans for UK citizens

Citizens of the United Kingdom currently residing in Estonia will be able to continue to reside here on the basis of the principle of legitimate expectations, therefore they will be legal residents of Estonia even if the United Kingdom leaves the European Union without a withdrawal agreement. The aim is to make the continuation of people's everyday life here as smooth as possible.

1. **Family members of UK citizens** who are third-country nationals will be able to stay in Estonia on the basis of their current residence permit.
2. Citizens of the United Kingdom who have lived in Estonia for at least five years and have received the right of permanent residence on the basis of the Citizen of the European Union Act have the right to acquire a **long-term residence permit** of the European Union after the United Kingdom leaves the EU. Citizens of the United Kingdom who have lived in Estonia for less than five years can acquire a residence permit for taking up permanent residence in Estonia after the withdrawal of the United Kingdom.
3. **The fee** for replacing a residence certificate of an EU citizen with a residence card is 35 euros. In the case of children under the age of 15 and persons who have attained the Estonian old-age retirement age, the state fee for reviewing an application for a residence card is 7 euros.
4. Citizens of the United Kingdom who arrive in Estonia after Brexit must apply for a residence permit under the terms and conditions provided for in the Aliens Act, i.e. on similar conditions that currently apply to third-country nationals. The government has made a proposal to exempt the citizens of the United Kingdom from the **immigration quota**; for example, the exemption already applies to citizens of the United States of America and Japan.
5. **Students of the United Kingdom in Estonian case of a no-deal Brexit:** The status, rights and obligations of students who are citizens of another country are regulated by the Aliens Act of Estonia. After the United Kingdom leaves the European Union without a deal, any student, who is a citizen of the United Kingdom must apply for a residence permit to begin or continue their studies in Estonia. Tuition fees and related issues are regulated by an agreement signed between the student and the university. In the case of students studying or beginning their studies in Estonia as part of various exchange programmes, the aim is to preserve circumstances that are as similar as possible to the current conditions.

Drawbacks for the UK in Estonia of no Deal Brexit

1. Lack of the legal certainty that would be provided by the Withdrawal Agreement and no legal mechanisms for ensuring the correct and fair implementation of contingency plans.
2. Uncertainty — due to the potential suspension of the Citizen of the European Union Act UK If the United Kingdom leaves the European Union without a deal, the Aliens Act will immediately apply to the citizens of the United Kingdom and their family members.
3. In case of no deal holders of temporary residence permit, if a person wishes to apply Estonian permanent residence permit (according to the EU directive), **the language test** (B1 level) is necessary. Today, we do not have any exemption of language test, exempt of age. It means that person under 15 years and over 65 years of age, etc. is not required to pass the language test and they get the permanent residence permit if other conditions are fulfilled (5 year residence in Estonia, legal income, etc.). So it means that the language test affects only those persons, who do not have a permanent right of residence under the EU Citizens Act and who acquire a temporary residence permit after Brexit and in future wish to apply for permanent residence permit after 5 years residence in Estonia.

ANNEX 4 - FRANCE: No Deal Contingency Plans

Background

Between 150k and 200k Britons are resident in France. 67.6% are of working age; 19.2% are over 65; 13.2% are under 15. It is a largely rural population with 43% living in south-west France. Around 67% have lived in France for more than 5 years. Since 2004 registration as an EU citizen has not been compulsory and less than 20% currently hold any form of residence card.

The French government was the first to pass no deal contingency legislation. Loi 2019-30, Ordonnance 2019-76 and 2019-264 together set out in detail the specific measures that will be taken and how they will be applied to people in different circumstances. All rights covered by the legislation are subject to reciprocity.

Since November 2018 the British in Europe France team has engaged directly with advisers, politicians and officials in the French government and takes part in regular conference calls with the British embassy team in Paris, including the ambassador.

Key rights guaranteed for Britons legally resident on Brexit day

Continued residence for rights holders and existing family members; to work without a work permit; Britons working as civil servants and teachers allowed to continue even though they don't meet the condition of being EU citizens; professional qualifications already recognised or in process of recognition on Brexit day will continue to be recognised; to study; health care for S1 holders for up to 2 years; continued access to top up/income support benefits for 12 months.

Administrative procedures and conditions prescribed by the legislation

Aim & starting point: to fit British nationals into existing third country national (TCN) immigration rules, with (in some instances) more favourable conditions.

Grace period: 12 months from the date of exit. Britons may live in France under current conditions and without a residence card, although applications must be made within 6 months of the date of exit.

Residence cards: Britons resident for more than 5 years will apply for an EU long term residence (LTR) card, valid for 10 years. Those resident for less than 5 years will apply for one of 6 national residence cards, according to their status.

Application procedure - long term residents (>5 years): holders of EU permanent resident cards will obtain LTR card automatically on application. Those without this card will need to apply showing proof of health cover and of sufficient resources. Card valid 10 years.

Application procedure - short term residents (<5 years): all will need to make a complete new application -even if they currently hold an EU card - under appropriate category: student, permanent salaried worker, temporary salaried worker, self-employed, job-seeker/business creation, 'visitor' (retired, self-sufficient, or doesn't fit into other categories). Cards will be valid between 1 and 4 years. Conditions are less stringent than for other TCNs applying for the same card, *but* in some cases more stringent than those currently applied to EU citizens.

Process: all applications must be made within 6 months of Brexit day. An online application form is envisaged but no details are yet available. Applications will continue to be processed at departmental level. The cost of each card is 119 euros.

Citizens' rights in France under a withdrawal agreement

France has not yet published plans for how it will manage the registration of British citizens in a deal scenario. We have been advised that it intends to adopt a *constitutive registration process*, under Article 18(1) of the Withdrawal Agreement. Residence permits will be free of charge.

Reciprocity

The legislation states that *any or all of the provisions made for the treatment of British citizens resident in France may be suspended with two months' notice if the UK does not accord equal treatment to its French citizens, and/or does not match the provisions on the movement of goods and people*. Discussions with French politicians and officials have suggested that the government is looking for the rights of EU citizens resident in the UK to be enshrined in primary legislation as a measure of reciprocity. This is obviously highly concerning for British residents and creates continuing uncertainty.

Some issues and concerns arising from the no deal legislation

Numbers. The process of verifying legal residence and registering from scratch 150-200k Britons is a mammoth task; many departments are completely unable to cope currently and it is hard to see how they could cope with these numbers.

Timescale. No provision made for an extension of the 6 month application window or the 12 month grace period should the French administration be unable to cope. Legislation is silent on what happens if British citizens fail to meet the 6 month registration deadline.

The devil is in the detail. There are many gaps and (so far) unanswered technical questions: we have already compiled a list of over 30 such questions for discussion with the Ministry of the Interior; however, it is likely that we will see considerable local differences in treatment.

Family reunification. Future family reunification is not covered by the legislation and will be determined by national immigration rules.

Governance. Unlike the draft Withdrawal Agreement, the contingency legislation does not provide for a separate legal mechanism to ensure its correct and fair implementation.

Outreach. Particularly important in France because of the lack of current registration requirement and therefore of either local or national databases of British nationals, plus high numbers of residents involved. To date not enough has been done: French government website is in French only and not comprehensive; embassy outreach sessions are reaching only a small percentage of residents; media coverage is scant. Although the French government reacted swiftly to pass its no deal legislation, the lack of resources given to communication and outreach to the 150,00 to 200,000 people who will need to act to secure their rights gives us real cause for concern.

Citizenship

Applying for citizenship (possible with >5 years residence) in France is a demanding process with language requirements (currently B1, soon to be increased), the need to demonstrate a stable income which for those who are economically active must derive from France, and the need to demonstrate detailed knowledge about France. Naturalisation is granted as an 'honour' not as a right. Applications take, in theory, between 2 and 2.5 years, although it is not uncommon for them to take 4 years in some regions. Over the last 2 years the number of British applicants for citizenship has increased dramatically, but it is not an option for everyone, and for those moving to France on retirement with perhaps more limited language skills it is likely to be always out of the question.

ANNEX 5 - GERMANY: No Deal Contingency Plans

Background

Germany has one of the largest British populations, of around 117,000 UK citizens, although the increase in the number of UK citizens taking German citizenship in the last two years may mean that reported figures for the population in 2019 will have decreased. Similar to overall EU 27 figures, nearly 80% of those in Germany are of working age or younger, but there is an important minority of retired people, who generally retired in Germany after working there. The vast majority have been in Germany for more than 5 years.

Germany is a federal state: thus, while immigration (for third country nationals) and citizenship rules and regulations are set at federal or national level, each Land or Region has a large measure of discretion about how these rules are implemented. This means that in a no deal scenario, UK citizens living in different Länder may be treated differently.

British in Germany/British in Europe have had a large number of meetings at federal ministerial and regional level, as well as with MPs and regional politicians, and have given expert oral before the Bundestag and regional government, as well as written evidence at national and regional level. British in Germany has also worked closely with the British Embassy in Berlin on citizens' rights, especially on outreach, and has a good working relationship with the Embassy staff working on these issues.

Legislation/Measures taken

Germany has not adopted any comprehensive legislation setting out the position of UK citizens in both no deal and deal scenarios. An emergency Brexit transition phase law has been passed: this deals with labour, education, health, social affairs and citizenship. The Bundesministerium des Innern or Interior Ministry (BMI) has published a statement on its website setting out a summary of the expected approach in deal and no deal scenarios.

Position if the Withdrawal Agreement is ratified

While legislation has not been adopted, we have been advised that Germany intends to adopt a *constitutive registration process*, under Article 18(1) of the Withdrawal Agreement. The BMI website confirms that British citizens will need to apply (constitutive system) for the new status under the Withdrawal Agreement, rather than have this confirmed through simple registration (declaratory system).

No Deal Scenario

The BMI website sets out what is planned in the case of a no deal.

Registration: In order to be covered by the future measures, British citizens and family members must be registered in Germany (this is compulsory) prior to Brexit day.

Grace period: Nine months from Brexit day. During this period British citizens and their family members can, without a residence permit, live and work in Germany as before, with access to existing social assistance benefits or child benefit, as well as existing rights of health and long-term care insurance. UK citizens can continue to work on a self-employed or employed basis in any role,

and in any occupation, regardless of where their employer is based and without having to obtain approval from the Federal Employment Agency.

During the grace period registered citizens must apply for a residence permit. Some Ausländerbehörde (Foreigners' Offices) have set up online registration systems to start this process, while others have written to British citizens directly or will do so post Brexit day. In addition, S1 holders also have the option within three months of Brexit day to transfer to a German health insurance organisation, or Krankenkasse, to secure continuing healthcare, subject to monthly payments that will be applied at a reduced rate.

After the grace period

- British citizens and their family members must hold a residence permit, since, after Brexit, they will no longer be EU citizens but third country nationals. It is not yet clear which third country residence permit, however, and there are some 140. It is unclear, for example, whether evidence of either minimum income or health insurance will be required.
- The BMI advises British citizens to contact the relevant Ausländerbehörde in the region where they live to discuss their application post Brexit and then links to the BAMF (the Federal Office for Migration) as regards the different permits. Until such time as a decision is taken on their application, they will keep the same rights to live and work in Germany as they have during the grace period.
- British citizens who have 5 years' continuous residence at Brexit: These citizens will be entitled to an EU Third Country National ("TCN") long-term residence permit. There are no further details as to how the LTR directive will be applied to British citizens post Brexit.
- Germany has also informed the EC that national permanent residence will in principle be available after five years' residence.
- There is no clarity yet as regards the position of those with less than 5 years' continuous residence. The BMI notes that it is looking at the legal framework required to help where issuing residence permits is not straightforward due to stricter requirements in place (under Germany's third country national regime) than for EU citizens.

Reciprocity

There is no clear information as yet as regards whether the system put in place by Germany depends upon equal treatment of German citizens in the UK. However, our discussions with officials suggest that Germany is watching carefully what the UK does as regards German citizens in the UK as well as the UK's plans for its future immigration system post Brexit. Given that there is no legislation to date, this is of concern for British citizens in Germany.

Some issues and concerns arising from the no deal legislation

- The main concern is the lack of information. As explained above, we currently simply do not know exactly what rights British citizens will have in a no deal situation. In the event of no deal, UK citizens in Germany will simply default to third country national status.
- Thus UK citizens in the majority of Länder who have registered where there is an online registration process, or have received a letter from the authorities, are simply waiting for

appointments post Brexit. And even where they have registered or been in contact with the authorities, they generally have no idea of what status they will apply for through this process or what conditions they will have to fulfil.

Citizenship

The BMI sets out the position on citizenship applications and dual citizenship in both scenarios. In the case of a deal, those applying before 31 December 2020 will be able to keep both citizenships (German and British) even if the decision is after the transition phase if all the conditions for citizenship were filled before that date. Similarly, in the case of a no deal, those who applied before Brexit date will have the right to keep both citizenships subject to the same conditions. Otherwise, dual citizenship will not be an option.

ANNEX 6 - GREECE: No Deal Contingency Plans

Background

There are an estimated 40k UK nationals living in Greece, the majority of whom are of working age. Most are registered according to Greek law as resident EU nationals although there are an unknown number who are unaware of the need to do so.

British in Greece has over 800 members but we are in contact with other UK emigrant groups in Greece so our reach is greater. Our main aim is to provide support and practical details for dealing with Greek bureaucratic processes. We have been unable to establish a direct line of communication with the Greek government despite several attempts. **The British Embassy** has been polite in answering our requests for simple information but our appeals for clarification concerning Greek legislation are countered with a request to seek information directly from the Greek government.

On 19 March 2019, the Greek Parliament approved Law 4604/2019 which promises to guarantee UK citizens' rights in Greece after the withdrawal of the United Kingdom from the European Union. It includes provisions both for the case of ratification of the Withdrawal Agreement as well as for the case of a no deal scenario.

Rights to residence and employment with a deal

The law confirms that on ratification of the Withdrawal Agreement, the rights of UK citizens and their family members already living in EU countries, including Greece, will be fully protected, according to Part II of the Agreement. Their rights will also be fully protected during the transition/implementation period (from withdrawal date until the end of 2020), as provided for in Part III of the Withdrawal Agreement.

Rights, administrative procedures and conditions in no-deal (as known so far)

Grace period: from withdrawal date until 31 December 2020. UK citizens and their family members legally residing in Greece before the withdrawal date (holders of a Registration Certificate or a Permanent Residence Document) will be able to continue to stay, work and study under the same conditions and with the same rights as prior to the UK's withdrawal from the EU.

Unregistered residents: those not registered at Brexit date may register under current EU conditions until 31 December 2020. Britons newly arriving in Greece during the grace period may also register and stay under the same conditions.

Current residence documents: validity will be extended until the end of 2020. These documents will be considered as temporary national residence permits. All residence documents will expire on 31 December 2020.

Future residence cards: from 1 January 2021 current cards will be replaced by biometric residence permits. These will take two forms, either a long term EU residence permit for third country nationals (with integration requirements waived) or a new national residence permit. Both are renewable after 5 years and guarantee 'almost' the same rights as EU/Greek citizens.

Healthcare and social security: UK citizens and their family members legally residing in Greece before the withdrawal date 'will continue to enjoy healthcare benefits (in public hospitals and for

public health services) from withdrawal date until the end of 2019. Further legislation upon withdrawal dependent on EU directives and reciprocity with the UK.

'More favourable measures': The law 'does not preclude the adoption of additional or more favorable measures in case of no deal (for UK citizens' residence, social security and healthcare), but this will depend on further EU decisions as well as on reciprocity by the United Kingdom'.

Potential issues with Greek Brexit legislation – lack of detail.

The Greek government has been quick to reassure UK nationals that they will be able to carry on with their lives as before but many of the crucial details in the **no-deal legislation** are missing, although we are promised further updates. Therefore, at the moment :

Requirements unclear: We are not sure what the requirements will be for obtaining the new permits or indeed the difference between the two types. So will it be an exchange with our present EU permits with no further paperwork involved beyond that which we have already provided? Or an application on possibly more stringent terms than the paperwork which we have already provided to get our existing permits?

Conditions unclear: legislation/Brexit website unclear whether Britons would have to meet new minimum income and health insurance requirements retroactively. Similarly, the Greek no-deal legislation states that integration requirements for EU long term residence permit are waived but is unclear on the minimum income and health insurance conditions. If a UK national is not be able to meet the requirements would their application be automatically rejected or would they be allowed to stay to attempt to meet these requirements in the future? Would there be any form of appeal if their application is rejected?

Health care: there are no details about what will happen to the healthcare of those who have not paid into Greek state health insurance after December 2019. Greek law at present allows all those legally resident in Greece access to free basic state healthcare regardless. However, this could easily change with the next government.

Cost: we do not know the cost of the new permits.

Renewal: the biometric permits have to be renewed every five years. Will this be an automatic renewal or will we have to provide further paperwork?

Citizenship

The transition period allows for applications for **Greek citizenship** up until the end of the transition period. However in most areas the waiting list is at least four years and the integration requirements (linguistic and cultural) might be beyond the abilities of the average UK retiree.

ANNEX 7 - HUNGARY: No Deal Contingency Plans

Background

It is thought that between 5000 and 10000 Britons are living in Hungary. A breakdown has not been made available, but it is known that this is spread across full time students, full and self-employed, semi-retired and retired people. There has always been a requirement to register as resident within 3 months of arrival, obtaining the necessary residence permits, address cards etc.. However, it was clear at the last town hall meeting that not everyone was registered, and everyone was encouraged to do so by both Embassy and Hungarian officials. The Hungarian Government passed legislation on March 26th 2019 setting out their policy in the event of the UK leaving the UK. Town hall meetings were held at the end of 2018 and as the above legislation was about to be agreed.

Key rights guaranteed for Britons legally resident on Brexit day

British nationals and their family members who are resident at the time of Withdrawal will be entitled to obtain a national permanent residence permit on the basis of three years prior residence. This is a reduction from the standard 5 years! Under the scheme for those already resident, the Right to reside, work as an employee and self-employed, study or do research is guaranteed. The same rules will apply to non-EU/UK family members provided the relationship existed prior to withdrawal day.

Administration

The new scheme applies from the date of withdrawal, and application for permanent residence has to be made no more than 3 years from the date of withdrawal.

Costs for the Right to permanent residence have not yet been published.

Reciprocity

The Hungarian Government made it clear that reciprocity will be required from the British Government.

Citizenship

There have been no apparent updates on the requirements for citizenship, which in any case is quite complicated in Hungary. There are a whole host of factors and routes to be taken into consideration, depending on things such as having any lineage related to Hungary, how long you have been resident, marriage status and the possible need to take a language exam.

Concerns

The one concern I and others seem to have is that staff in the various local and regional offices are not always aware of changes.

ANNEX 8 - ITALY: No Deal Contingency Plans

Numbers

- British citizens in Italy: official Italian statistics show 28,000 registered residents in 2017. UN figure is that the true number is up to 65,000 and both the Embassy and British in Italy (“Bil”) use that figure. No age or occupation breakdown is available.
- Italians in the UK: up to 700,000.

If the Withdrawal Agreement is ratified

Italy has passed no legislation to cover the situation if the WA is ratified, but has announced publicly that it will adopt the simpler “declaratory” process for registration under Art. 18 WA rather than requiring us all to apply for a new status.

No Deal - Italian Brexit decree

Italy issued a Brexit decree in March 2019 which includes 3 articles on the rights of UK citizens in legislation principally concerning 5G security and post-Brexit financial services. Apart from a provision on citizenship, the law takes effect only in the event of a No Deal Brexit. The law was slightly modified in its passage through Parliament, and intensive lobbying by British in Italy to improve it met with some limited success.

Whilst the law is fairly clear on our residential status it is silent on the rights attached to that status. Attempts to clarify the law in Parliament failed. For this we have to wait for a circular and/or official explanation on the internet, which will not be published before the autumn.

Registration

To have any rights at all under the decree you have to be registered as a resident EU citizen (or non-EU family member) at the date of Brexit (“registered residents”).

Grace period

- From Brexit day until 31.12.20. During this period the EU registration cards of registered residents will continue to be valid, and by implication they will continue to enjoy their EU rights (other than rights outside Italy which are not in the gift of Italy).
- During the grace period registered residents must apply for one of the new status described below.

After December 2020

- Registered residents who have 5 years continuous residence at Brexit will be entitled to an EU Third Country National (“TCN”) long-term residence permit. The permit is valid indefinitely but lapses after a year’s absence from the EU or 6 years from Italy.
- Bil has been assured that the application process will be declaratory and that those with EU permanent residence will simply be able to exchange one permit for another. This is not expressly stated in the law. The position of those who are entitled to EU permanent residence but who have not obtained the optional certificate of permanent residence is unclear. Language tests will not be required.

- On the face of the law those with EU permanent residence who have been absent from Italy for over 6 months in a year during the last 5 years (as they were entitled to be whilst EU citizens) face a retrospective deprivation of rights as they will not be able to obtain the TCN long-term residence permit, but Bil has been assured that this is not the intention. It remains to be seen how the authorities on the ground interpret the law.
- Those with less than 5 years continuous residence at Brexit will receive a new temporary residence permit valid enabling them to apply for the long-term permit when they have completed 5 years continuous residence on condition that during those 5 years they have complied with the permitted absences provisions (the same ones as those applicable to EU citizens). It is unclear whether evidence of either minimum income or health insurance will be required.
- The Italian government says that registered residents will have “continued enjoyment of the framework of current rights (e.g. access to medical care, employment, education, social benefits and family reunification).” However, the devil is in the detail and it remains to be seen whether there are differences between the different types of residence permit.

Concerns

- The main concerns come from the lack of clarity in the law. There are real concerns as to:
- The right of those who are neither working nor family members of a worker to continue to be registered in the Health Service without having to pay a substantial annual fee (starting at 7.5% of income) or having health insurance.
- The new law says that UK pensioners with an S1 form under the EU reciprocal health scheme will continue to be entitled to free treatment until 31.12.20, but it remains to be seen how this will work given the UK’s agreement only to pay for S1 treatment which has been started or ‘applied for’ pre-Brexit, and then only for a year.
- Both the UK and Italy have expressed willingness to ‘do’ a bilateral deal on healthcare and social security coordination after Brexit: this could solve both the above problems.
- The possible retrospective deprivation of the right of many UK permanent residents to the new long-term status (see above).
- Whether those working in those public sector jobs, particularly teaching, restricted to EU/Italian citizens will continue to be able to do so, especially where there is an annual competition for the job. This affects a large number of UK citizens in Italy.
- Reciprocity with the UK is of fundamental importance to Italy. Bil believe that the lack of clarity in the law may be deliberate, and designed to enable Italy to adjust our rights to any perceived deprivation of rights for Italians in the UK.

Citizenship

Dual citizenship is permitted. EU citizens are entitled to apply for naturalisation after 4 years’ residence whereas TCNs have to wait 10 years. The time for processing applications is very slow: the legal time-limit for processing, which has just been extended to 4 years, is often exceeded and there is no remedy for this. Bil raised a concern over those who had applied on the basis of 4 years’ residence but whose applications had not been decided pre-Brexit. The new law meets this by providing that those with 4 years’ residence at Brexit can apply for citizenship until 31.12.20 and will continue to be judged on the 4 year test. There is a new language test (level B1) which may be difficult for some to pass.

Outreach

Outreach by the Embassy to British nationals was slow to start and not always well-informed. Great improvements have been made recently. In addition to a large number of “town hall” meetings across the country conducted by the Ambassador and others, there is an Embassy newsletter and videos on Twitter. Detailed planning is underway for further attempts to get to the “hard to reach”, who have buried their heads in the sand or simply remain unaware of the need to do anything. These plans are discussed regularly with Bil.

Little information is provided for the public by the Italian authorities. However since Bil’s first approach to the government in 2017 we have had regular and informative meetings with them.

ANNEX 9 - LUXEMBOURG: No Deal Contingency Plans

Background

At the beginning of 2019 there were 7148 British citizens living in Luxembourg: 5786 of those hold British nationality only, while 1382 are dual British-Luxembourg nationals. Britons form the 7th largest international community in Luxembourg. Eurostat statistics suggest that 75.8% are between the ages of 15 and 65 - the highest percentage in the EU. 17.1% are under 15, while only 7.1% are over 65. There is also a small but important minority of British in Luxembourg who are frontier workers, living in another country and working in Luxembourg.

The citizens' rights group British Immigrants Living in Luxembourg - a core/founder member of British in Europe - has engaged closely with the Luxembourg government, meeting with politicians and officials as well as co-authoring a "proposition" on post-Brexit citizens' rights with the National Council for Foreigners (CNE) to the Luxembourg government which was delivered to the members of the Luxembourg parliament on 2nd January 2019. It also engages regularly with the British Embassy and the ambassador.

On 8 April 2019 Luxembourg adopted no deal contingency legislation.

Key rights guaranteed for Britons legally resident on Brexit day

The right to reside, work, study, or do research. Family members of British residents are also included provided the relationship predates the date of Brexit and they are already resident in Luxembourg on that date. Those employed as civil servants with a permanent contract on the date of Brexit will be permitted to keep their jobs. Frontier workers may continue in employment but will have to apply for a special work permit (under simplified conditions to be announced later).

Administrative procedures and conditions prescribed by the legislation

Scope: British citizens and their family members legally resident on Brexit day. Registration is currently compulsory in Luxembourg.

Aim & starting point: to fit British nationals into existing third country national (TCN) immigration rules.

Grace period: 12 months from the date of exit. Britons may live in Luxembourg under current (ie EU) conditions during this period, and current registration documents will remain valid. All British citizens must apply for a new residence permit during the 12-month grace period, at the latest by 3 months before the end of the period. Application details have not yet been announced.

Residence cards: Britons resident for more than 5 years will apply for an EU long term residence (LTR) card, valid for 10 years. Those resident for less than 5 years will apply for one of the national third country national residence cards, according to their status.

Application procedures: these have not yet been published. The intention is that British residents will need to meet existing third country national residence conditions. The Luxembourg government has decided to apply 'procedural facilitations' when processing applications for residence permits for British nationals and their family members, and these will be announced at a later date.

Process: applications will be processed via a central point in the Immigration Directorate. Biometric cards will be issued. The cost of cards will be the same as for all third country nationals, currently 80 euros.

Citizens' rights in Luxembourg under a withdrawal agreement

Luxembourg will apply a declaratory registration process under Article 18(4) of the Withdrawal Agreement. Applications for a new status will not be required and existing cards will be exchanged for new cards confirming the new status.

Some issues and concerns arising from the no deal legislation

Timescale: those who miss the application deadline may find themselves excluded from any procedural facilitations and would have to go through the complete third country national application process, which could in theory involve leaving the country to obtain an entry visa.

Lack of detail: no details of the proposed procedural facilitations have so far been published.

Frontier workers: uncertainty for those who change jobs/take parental leave - do they retain right to work?

Government contract agents: will be dealt with on case-by-case basis so ongoing uncertainty.

Health care for current S1 holders: no provision for continuing access to the health care system for S1 holders (those who work in the UK but live in Luxembourg, or those residing in Luxembourg with a British state pension). People in either of those situations will have to apply for the Luxembourg voluntary healthcare insurance and pay contributions.

Hardship cases: some British citizens may find themselves unable to meet residence conditions as third country nationals even though they currently meet the conditions as EU citizens. Others may find themselves without social security benefits once they become third country nationals. It is unclear what would happen in these cases.

Citizenship

Acquiring citizenship is relatively straightforward in Luxembourg compared to other EU countries; when BRILL surveyed its members (30+% response rate) 90% said they intended to seek citizenship when they could. Unlike in Belgium, British EU civil servants are not being refused citizenship. However, frontier workers resident in France are being refused French citizenship because of the fiscal residence rule in France which requires income from professional activity to come from France - which means that income largely earned in Luxembourg is not being taken into account in some préfectures. Appeals are in progress.

ANNEX 10 - NETHERLANDS: No Deal Contingency Plans

Background

There are approximately 46,000 United Kingdom (UK) citizens of working age resident in the Netherlands (NL); this figure increases to approximately 85,000 when British passport holders of all ages are taken into account. On January 7 2019, Dutch **Foreign Minister Blok** made a statement to the Dutch parliament about what will be done in the event of 'no deal'. This statement is binding and some of the procedures have already been started.

The Key Points of Minister Blok's Statement

1. NL will implement a fifteen-month 'transition period' after a no-deal Brexit. **During this period**, UK citizens **already** resident in the Netherlands will maintain their right to live, work and study in the Netherlands in the same way as an EU citizen.
2. British citizens and their family members will be invited by the Immigration and Naturalization Service (IND) throughout the transitional period to apply for a **definitive residence permit**. The same residence conditions will apply as for EU citizens (Directive 2004/38 / EC). This means that all lawfully resident Britons, on the basis of Directive 2004/38 can continue to live, study and retain free access to the labour market in NL.
3. Britons who have been lawfully resident in NL for more than 5 years can obtain a **long-term residence permit** under the same conditions as EU citizens. They do not have to meet the integration exams requirement for third-country nationals.
4. Britons lawfully resident in NL for less than 5 years will receive a **temporary residence permit** if they meet the residence conditions that apply to EU citizens who have been in the EU for less than 5 years. With this permit, British citizens retain free access to the labour market. These British citizens are also exempted from the integration exams obligation.
5. For UK citizens who are studying in NL, **statutory tuition fees** continue to apply and they retain the right to study financing if the other conditions for EU citizens are also met.
6. The rights of British citizens to any **social security payments** or any 'tax credits' will become those of a Third Country National — unless there is a unilateral agreement with the UK Government about reciprocal rights for Dutch Nationals resident in the UK.
7. It is a legal requirement for any person, of any nationality (even Dutch citizens), resident in NL to have **health insurance**. Therefore health care legislation was not necessary. British citizens with Dutch medical insurance will still have the right to emergency treatment in all EU countries under the European Health Insurance Card system (EHIC).

Implementation of the Administration Procedures

In December 2018, **British in the Netherlands** asked the Dutch government for residence/work permits before a possible no-deal Brexit. In NL, all nationalities must be registered at their habitual address of residence. Therefore it was relatively easy for the Dutch authorities to issue a '**temporary residence/work permit**', in the form of a letter, to all UK nationals over the age of fourteen. This was implemented in a 'roll-out' procedure from the end of January 2019 until March 28 2019. A similar 'in-stages, roll-out' procedure will be implemented to 'invite' UK nationals **to apply** for a residence/work permit 'proper' the day after the UK leaves the EU.

Issues Still Present in the Event of 'No Deal'

After getting their new permits, Britons in the Netherlands will only have the rights of **Third Country Nationals**. This means that:

- After a continued absence of six months residency from NL, the right to reside and work is forfeited. This will directly affect those who might be sent outside NL on secondment by their employers or those who need to leave NL temporarily to care for ill or elderly relatives.
- The Dutch government is **unable** to make bilateral agreements with other EU27 countries to ensure the right of UK citizens to reside in NL, but work in another EU country. This is a huge problem for cross-border workers and those who are self-employed in small businesses. These people, because of the loss of the Four Freedoms of Movement, will have to **apply to a country that they are not resident in for the right to work there**, or apply to be able to invoice in other EU27 countries for goods/services provided.

Citizenship and Nationality

The Dutch government only allows for dual nationality under specific circumstances. Therefore it is **impossible** for the vast majority of UK citizens resident in NL to become dual nationals. Those continuously resident in NL longer than five years and who can pass the integration exams, can become Dutch citizens; but they are legally obliged to renounce UK nationality. This will affect the right to return to the UK, either temporarily or permanently. We do not know if renunciation of UK citizenship will affect our right to UK State/Civil Service/Military pensions, inheritances etc. British in the Netherlands has requested clarification on the issue of pension entitlements (for those who rescind UK nationality) from the UK *Department for Work and Pensions* but has received **no response**.

CONCLUSION

The Dutch government has listened to our concerns and the possible solutions that British in the Netherlands has offered them. The Dutch government **has** been generous in the event of a 'no deal' scenario. However, there are still important issues that have not been dealt with either by the Dutch or UK governments.

ANNEX 11 - PORTUGAL: No Deal Contingency Plans

Background

The current **British population** is believed to be approximately 60,000, with half of these thought to be unregistered. Of those living legally in Portugal, 5.3 per cent are aged between 0-15 years, 55.9 per cent between 15-65 and 38.8 per cent aged 65 and over. With over half of these Britons living in the Algarve, there is also a large, undocumented UK residency based British population, that move between the two countries.

The Amendment to the European Nationalities Act 2006

In February 2019 a draft Amendment to the **European Citizens Act 2006**, was presented to Parliament to provide for a no-deal scenario. After discussions with the **British Embassy** and **British in Portugal**, on 27 March 2019 the **Amendment to the European Nationalities Act 2006** was ratified, but amended so that all British citizens legally resident in Portugal, prior to the Brexit date, would not be considered under third-country-national rules.

- the measures in this bill are **conditional to reciprocity** from the UK government and the Amendment can be amended or withdrawn at any time.
- there will be a **period of grace** that ensures that UK citizens will remain legally resident until 31 December 2020.
- during this period registered Britons can exchange their existing EU residency documents for **new residency permits** on Brexit taking place. The fee for this is unknown.
- **unregistered British citizens** living in Portugal prior to the Brexit date will have until the 31 December 2020 in which to register. Proof of arrival in Portugal before the Brexit date will be required but as yet, what proof is required, is unknown.
- **Britons arriving post-Brexit** will be treated as third-country nationals and third-country-national residency conditions will be applied to them.
- **UK students in higher education**, enrolled in a study course prior to 31 December 2020, will not have **international study fees** applied until after the end of that course.
- **UK social security contributions** prior to the Brexit will be recognised and there will be a continuation of exchange of information between the two countries to establish those periods for those already resident come Brexit.
- **the recognition of professional qualifications** will continue for British citizens already carrying out a professional activity in Portugal come Brexit. This recognition will also apply to pending applications.
- **healthcare** can be accessed by legally resident Britons registering at a health centre. Holders of the S1 form, being given that status, will be required to change this status to that of being a resident. British citizens, visiting Portugal, can continue to access emergency public health care until 31 December 2020 on production of a passport.

- British citizens legally resident in Portugal prior to the Brexit date are able to exchange their UK **driving licences** for Portuguese driving licences until 31 December 2020.
- A bilateral agreement was signed, on the 12 June 2019, giving continuing **local voting rights** to British citizens already resident and, post Brexit, to those after 3 years of residency, with the ability to stand for election for local office after 5 years of residency.

Effects of the No-Deal Scenario and Portuguese Legislation

Although Portugal has been proactive in protecting British citizens as much as possible, throughout the recent Amendment, **reciprocity and the ability to amend or withdraw the legislation at any time is clearly stated.**

British citizens, legally resident, assisted by the period of grace until the 31 December 2020, will be able to **reside, work and study** in Portugal as they have done previously. **Social security co-ordination** and **healthcare** are guaranteed together with **voting rights** and recognition of **professional qualifications.**

Nearly 60 per cent of legally resident British citizens are actively working or studying in Portugal. A number of British citizens will be **denied the right to move freely** between Portugal and Spain hence limiting their ability to work, sustain their current employment or give cross border services. There is no current mandate as to whether a British citizen resident in Portugal, after a **long absence**, will be able to return and resume that residency without question. With the family reunification rules currently in place in the UK, this has the potential to separate families.

Whilst **Portuguese citizenship** is an option the conditions to gain this are off-putting to many. In addition to factors at Westminster, **heightened uncertainty** for British citizens has taken place as any legislation is dependent upon reciprocity. Confusion as to the retained/lost rights in the Withdrawal Agreement or in the event of a no deal has increased as it appears a Governmental directive has been given to promote the Withdrawal Agreement despite its failure to be ratified.

Finally, despite all efforts, it appears there are approximately **30,000 British citizens who have failed to register.** We believe this emanates from 'the Empire Syndrome' that being British, given the long standing ties with Portugal, the belief the Portuguese 'need' British citizens, their economic input, therefore there is no necessity to register as residing in the country. This is despite the cumulative efforts to reinforce the seriousness of being an illegal immigrant as a third country national.

CONCLUSION

The Portuguese Parliament has been given the unenviable task of balancing its **long-standing relationship** and maintaining its **economic relationship with the UK**, together with supporting its own citizens who reside there and British citizens living in Portugal.

To date Portugal, and its Government, have done well in managing to achieve this. They have maintained cordiality between the two nations and, for this to be continued, are now dependent upon the future actions of the British Government. As has often been said, actions speak louder than words.

ANNEX 12 - SPAIN: No Deal Contingency Plans

Background

Spain has the largest UKinEU population (350,000). Between a 1/3 and 40% are UK pensioners and the rest are of working age or younger. The **Royal Decree 5/2019** with the Spanish government contingency plans was published on 1 March and was ratified by the Spanish Parliament on 3 April.

Royal Decree 5/2019

The citizens' rights section of this decree deal aims to ensure that there is a **smooth transition of UKinSp from EU citizens to Third Country Nationals** in the case of a no-deal Brexit. The citizens rights of UKinSp depend on reciprocity from the UK: "**two months after the Royal Decree comes into force, all the measures will be suspended if the British authorities do not afford reciprocal treatment to Spanish citizens or institutions in all the affected areas.**"

Administrative procedures for UKinSp:

- a **twenty-one month 'period of grace'** after a no-deal Brexit during which the existing documentation of UKinSp (as EU citizens) will remain valid, thus avoiding a legal cliff edge.
- the re-registration of Britons will follow the more straightforward **'declaratory' process** as opposed to the 'constitutive' path
- for **Britons with long-term resident status** this will involve the 'automatic' exchange of existing EU documentation for biometric Third-Country National Identity Cards (on completion of a form, payment of a fee (21,44€) and fingerprinting)
- Britons with **short-term residence status** (under five years) will need to prove that they have sufficient resources and have health coverage (either privately or because they are working in Spain), but the requirements will remain the same as for current EU citizens
- Britons who are resident before Brexit, but who have **not registered as EU residents**, will be able to apply for Third-Country-National Status if they can provide proof of residence.

Key rights guaranteed for legally resident Britons:

- a. the right to live, study, work and be self-employed in Spain.
- b. reciprocal healthcare for UK pensioners under the S1 scheme to continue, pending reciprocity, payment by the UK and a potential bilateral arrangement.
- c. social security coordination pending a bilateral agreement with the UK (in addition to the proposed EU regulation safeguarding social security entitlements and guaranteeing the principle of equality of treatment, assimilation and aggregation for returning EUinUK and UKinEU.
- d. professional qualifications already recognised to still be valid and applications made for recognition to be made under pre-Brexit rules.

- e. Britons working as civil servants will be able to continue doing so in Spain (not in other Member States), even though they do not meet the requirement of being EU citizens.

Drawbacks for UKinSp of a no-deal Brexit

1. Lack of the legal certainty that would be provided by the Withdrawal Agreement and no legal mechanisms for ensuring the correct and fair implementation of contingency plans.
2. Uncertainty — due to the potential suspension of Royal Decree 5/2019 mentioned above.
3. Lesser status as third-country nationals: loss of key rights enjoyed by EU citizens on discrimination and political rights. Britons will be able to vote and stand in local elections after a no-deal Brexit due to a UK/Spain bilateral agreement signed on 29 January 2019.
4. Third-country nationals can only be absent for 12 months from the EU. This could impact young Britons, born and brought up in Spain. Eleven thousand young Britons have Spain as their country of birth, but have no clear route to Spanish nationality (see below).
5. The thousands of Britons who are EU family members (married or children of Spaniards or other EU citizens) will not be able to roll over EU long-term residence to EU family member long-term residence. They will have to start again as short-term residents.
6. The Spanish government's contingency plans include the allocation of more resources to process UKinSp in key provinces (eg Alicante and Málaga), but there are likely to be difficulties because of the sheer numbers involved, especially for more vulnerable Britons. Other problems could arise from the local interpretation of the Decree in autonomous regions.

The cul-de-sac of Spanish nationality

EU citizens in the UK can apply for British nationality on gaining settled status (five years residence) which enables them to immediately access full citizens' rights. UKinSP effectively do not enjoy this option and thus will be condemned to be TCNs for the rest of their lives.

- The residence requirements in Spain is ten years. The language and culture requirements are not particularly difficult (A2 Council of Europe), but will be beyond the reach of most UK pensioners who have arrived in the country when in their sixties or older.
- Whilst the process for getting British nationality is relatively quick (if expensive), taking only a few months, in Spain there is a huge backlog of applicants (nearly 400,000). This means there are delays in the processing of applications of up to five years.
- Spanish citizens in the UK can acquire British citizenship and maintain their Spanish nationality. Britons in the UK do not have this option as dual nationality is restricted to countries with 'historical links' to Spain like Latin American countries. Thus Britons have to formally renounce their nationality and, on occasions, even hand in their passports. While it is possible in practice to keep both passports, Britons who do so are committing an illegal act.

CONCLUSIONS

The Spanish government has made a huge effort to deal with the large population of resident Britons in the event of a disorderly Brexit and to ensure a smooth administrative transition of Britons from EU citizens to Third-Country Nationals. However, UKinSP will become worse off with this change than Spanish citizens in the UK, primarily because of their loss of freedom of movement and the lack of a straightforward avenue to citizenship.