

AN EXPANDING OR SHRINKING EUROPEAN CITIZENRY AFTER BREXIT?

Background discussion document

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Introduction

On 29 March 2019, when the UK is set to leave the EU, 67 million people may automatically lose their status as EU citizens, unless such an unprecedented mass loss of a citizenship status can be prevented. The problem is that currently only nationals of one of the 28 EU Member States are EU citizens. What impact this loss will have on everyday life will be very different depending on what else changes or does not change:

-If there is no deal and the negotiations under *Article 50* on withdrawal from the EU fail, the citizenship status could disappear with immediate practical consequences since the agreement on citizens' rights reached in the negotiations would be null and void. There should be contingency plans for such an eventuality just as there is for possible food shortages, medical supplies or queues at borders.

-If there is a deal, there would be far less immediate practical effect from the loss of citizenship since everything would remain as before at least for a transitional period with European rights to free movement maintained in full as well as the procedures for their enforcement ultimately by the Court of Justice of the EU. Only the rights linked to the EU Institutions would disappear-to sign a European citizens' initiative and vote in the European elections.

UK citizens, especially those living in EU Member States, will either face a precarious situation or a paradoxical one of being stripped of citizenship whilst retaining most of its attributes. In this paper, four reasons are put forward for preventing the mass loss of EU citizenship with BREXIT:

- i) Transnational citizenship is fundamental to the European identity of young people
- ii) Civil society across Europe demands a European citizenship based on residence, not just nationality
- iii) A mass involuntary loss of a citizenship status would violate European values
- iv) To acquire the nationality of an EU Member State is a lottery for the few and not the solution

This paper ends with an appeal to support the **European citizens' initiative** (ECI) for permanent European citizenship, which has been accepted for registration by the Commission. This ECI could already be on track to acquire **1 million signatures**, with a minimum of signatures from at least 7 EU countries, provided there is support for UK citizens from their fellow European citizens. If millions can so easily be stripped of part of their citizenship status today, it could well happen to you tomorrow!

- i) Transnational citizenship is fundamental to the European identity of young people

For many, the addition of Union Citizenship to the Maastricht Treaty in 1993 was little more than a public relations exercise, whilst for others it was the beginning of a citizenship beyond the member state. 25 years on, most would agree that the truth lies somewhere between the two. At first sight, Union Citizenship which has since become Articles 18-25 of the Treaty on the functioning of the EU

(TFEU), did little more than confirm the existing rights of European citizens and their family members to move freely anywhere in the Union provided they have sufficient resources and medical cover not to be a burden on the host country. It is true that a right to consular protection outside the EU was added as well as the right to vote and stand in European and municipal elections in one's member state of residence. A thin set of Treaty provisions are though protected by an expanding body of regulation to remove barriers to the rights of residence, recognition of professional qualifications and to social security. The right to sign a citizens' initiative has been added since the Lisbon Treaty in 2010 and other rights are scattered across the Treaties and legislation such as the right of access to documents, rights to protection against all forms of discrimination, worker, women's' rights, consumer and user rights which apply just as much within one's own country as to cross-border situations. And what about exchange programmes such as Erasmus? EU citizenship is not limited to any particular set of Treaty provisions. If all this is put together, Union Citizenship is substantial, as ECIT has shown with its guidelines. Moreover, citizenship has been incorporated as one of the chapters in the broader framework of the EU's Charter of Fundamental Rights.

EU citizenship has become more than the sum of its scattered parts and the beginning of a citizenship in its own right, linked to the national version. ECIT and others have shown that EU citizenship has deeper historical roots, more legal substance, and is more widely practiced and popular than generally thought. The emergence of a real EU citizenship has much to do with the case law of the European Court which has repeatedly declared this to be a fundamental status which can be invoked as such in court. A decisive factor however is the way a citizenship beyond the member state is seen by young people who take it for granted since the fall of the Berlin wall that they have the freedom of the continent. According to Eurobarometer polls **70%** of people in the EU see themselves to some degree as European citizens and even in the UK, where there has been a recent increase, the average reaches 55%, whilst being much higher for young people. The rapidity with which people are signing the ECI on permanent European citizenship-over 65.000 in the first few days- is a sign of this popular support. Sociological Europe is different from political and legal Europe.

Preserving the status of EU citizenship is more than just an issue of preserving the European rights attached to it, since it has become part of peoples' identity, particularly among the younger generation. In turn an individual's status will determine how he or she is perceived as a rights holder and how the administration delivers those rights so that one cannot work without the other. For the younger generation European rights are not an end in themselves. Practicing European rights has allowed young people to develop their cross border friendships, networks and dreams of the future. It is on this basis that the EU should reach out to all young people- that is the main theme of the 10-point manifesto on which ECIT is working for the European elections in May 2019 . As the elections which are seen as a test for the future of the EU approach, ways should be found to expand rather than shrink its citizenry.

ii) Civil society across Europe demands a European citizenship based not just on nationality but also on residence.

It would be logical for civil society organisations and their members across Europe to support the general aims of the ECI on permanent European citizenship. This should not be just out of solidarity with young Europeans in the UK but also because they have consistently advocated for all third country nationals to be able to become European citizens. When EU citizenship was introduced it was immediately criticised for being limited to nationals of EU Member States by human rights and migrant organisations. More recently the European Year of Citizens Alliance, representing 62

European members and in turn more than 4000 individual organisations across Europe, declared in its manifesto for this special year in 2013: “If the European Institutions want a social and political Europe, the citizenship of the Union must be granted to all the people who live in the territory- including third country nationals who become resident in Europe”. The majority of European civil society organisations are also active in countries bordering on the EU and in practice make no distinction between European citizens within and outside the EU, often working with European programmes for exchange of young people or cross border project bridging such divides. In the early days after Maastricht the European Parliament also advocated in its resolutions on the Commission’s citizenship report for EU citizenship to be extended to third country nationals after 5 years of legal residence. It is not surprising that it is the European Parliament which shows most concern about the situation of UK citizens which wish to preserve their European citizenship.

The vision of an expanding rather than a shrinking European citizenship may appear utopian in a period of increasing nationalism, but is it really? Most people understand that their EU citizen and third country national neighbours are in similar situations, pay taxes and send their children to the same schools. Their status may be different, but in many respects EU regulations on free movement and residence- for example a five year period to qualify for permanent residence for both groups, - the coordination of social security arrangements and recognition of professional qualifications have at least in theory reduced the gap between EU citizens and third country nationals. Most economists advocate a higher level of free movement of labour and creating a genuinely European labour market including all migrants sufficient to help absorb asymmetric shocks particularly in the eurozone. And, an expanding EU citizenry should be advocated as a better and more natural way to integrate refugees and immigrants than the more burdensome approach of naturalisation. The current example with UK citizens concerned about losing EU citizenship with Brexit and facing the obstacles and differences in procedure to apply for the nationality of an EU Member state show that this is not the best European solution to the integration of third country nationals.

iii) A mass involuntary loss of a citizenship status would violate European values

In terms of European values of democratic debate and legal inquiry where differences of opinion collide, more should be expected than the dialogue of the deaf between opposing positions:

- **On the one hand**, the official view is that: “Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship” (Article 20 TFEU)-meaning that if a Member state leaves, its citizens lose that status. If they did not, it might encourage other countries to leave. While having sympathy for the UK nationals that wanted a different outcome of the referendum, under the current Treaties, only nationals of EU member states have EU citizenship. The task force has no mandate to negotiate on EU citizenship. Any other course of action would be considered as a challenge to a democratic decision by a Member State, its right to leave under Article 50 and contrary to the Treaties.

- **On the other hand**, some legal studies cast doubt on whether once obtained EU citizenship can be lost at a stroke, given the strong position of the individual under EU law and the lack of any provisions for this with the relationship between Articles 20 and 50 open to question. The assertion that this was the inevitable outcome of the referendum can be questioned since those most directly affected - EU citizens in the UK and UK citizens who have lived abroad in the EU for over 15 years- had no right to vote. However, even if there is no question that the decision was democratically taken, when it comes to citizenship, states are still obliged according to international standards and human rights law to accommodate the minority to the extent possible and respect their right to private and family life. If the EU were to apply international standards in cases where the issues have

arisen (i.e. former Yugoslavia and Czechoslovakia), one has to conclude that people cannot simply be stripped of a citizenship status without being warned, having any right of appeal or if possible offered a choice. Otherwise, so much for European citizenship as a “*fundamental status*”!

A research paper on European citizenship after Brexit by the House of Commons library in the UK has compiled the sources for these opposing views, whilst pointing out that those challenging automatic loss of citizenship are in a minority. It is a persistent and growing minority even though attempts to raise these issues in petitions to the European Parliament, the court case in Amsterdam or appeals to the European ombudsman have not got far. At the very least there should be a legal and democratic inquiry into standards under EU and international law.

iv) To acquire the nationality of an EU Member State is a lottery for the few and not the solution.

In case of loss of EU citizenship should the only route to keeping it be by acquiring the nationality of an EU Member State? There has been a dramatic increase in the numbers of UK citizens doing so since the referendum. In Germany, applications have increased from 622 in 2015 to 7,498 in 2017 and legislation has been proposed recently for it to be easy for British citizens to still acquire a German passport during any transitional period. It is difficult to have a clear picture since figures are not available for all countries. It is even more difficult to know for how many people this is a realistic option, even among the 1.2 million UK citizens resident in EU -27, let alone the millions back home.

Broadly speaking people fall in three categories:

- ***privileged access to another citizenship in the EU by descent or marriage***

If the UK leaves the EU, a favoured group will remain EU citizens outside its jurisdiction in Northern Ireland where they have a permanent birth right to claim Irish nationality and remain EU citizens. Some 5 million people on the UK mainland with an Irish parent or grandparent are in this category. Attention has focussed on the Anglo-Irish relationship but other EU Member States might allow for some citizens in the UK to claim nationality by descent especially if they are part of a recognised diaspora. In nearly all countries it is possible to claim nationality if you are married to a national, but you have to show that the marriage is stable and that you have been living together in the country for a minimum period. The lesson for young people in the UK is to fall in love with an EU citizen!

- ***semi-privileged access by naturalisation***

In practice, the option of naturalisation is only available to UK citizens who have already been resident in another EU Member State for the required number of years and who meet other possible conditions, such as knowledge of the language and history. The process is a national telephone code lottery. In France and Belgium for example, 5 years continuous residence is required, but this rises to 7 or 8 years for a group in the middle and up to 10 years for a group including Spain and Italy. At least 10 EU Member States demand renunciation of one's original citizenship, especially if one comes from a country outside the EU. The alternative to the national telephone code lottery is to be lucky enough to win the actual lottery and acquire a “golden passport” on the shores of the Mediterranean!

- ***under-privileged or no access to EU citizenship***

For the vast majority of people in the UK, access to EU citizenship is not possible because they do not happen to have any family connections to a Member State and have no record of sufficient residence outside the country. Different conditions for access to citizenship diverge and may appear complex but also follow a certain historical logic, where the closer your connection is to the country in terms of family or geography the easier it becomes. In the age of the internet such conditions attached to citizenship appear out-of-date and this is especially true of access to EU citizenship. People who stay in their own country do not necessarily see themselves as less attached to a transnational citizenship status than those who have taken advantage of the rights to free movement. In the UK, there are many who have become involved professionally or on a voluntary basis as active EU citizens with EU membership and who have developed their European connections and networks over the last 40 years. So, what happens to them?

Conclusion

Against this background, the European Parliament passed a resolution on 29 March 2017 in which it “takes note that many citizens in the United Kingdom have expressed opposition to losing the rights they currently enjoy pursuant to Article 20 TFEU; proposes that the EU –27 examine how to mitigate this within the limits of EU primary law, whilst fully respecting the principles of reciprocity, equity, symmetry and non-discrimination”. Guy Verhofstadt the leader of the liberal group in the European Parliament has fought hard to support some form of continued EU citizenship, not only for people who want the status resident in the EU, but also in the UK. There have been discussions in both houses of parliament in the UK and the government has stated that it is willing to consider proposals.

In the long run the support will come as the EU looks for ways to integrate newly arrived populations of refugees and migrants, but by then it may be too late. Evidence of support must come not only from the UK but from across the EU. There is a need also to test the issue of EU citizenship in the courts, not only in the Netherlands but also in other EU countries. Different approaches should be tried so that the issues of access to and loss of EU citizenship come on the agenda and receive at least a fair hearing

The best way to move forward before it is too late is to [sign](#) the ECI on permanent EU citizenship so that it reaches the 1 million signatures and the required threshold to be valid in at least 7 EU Member States. For that support committees are being set up across the EU. If the ECI is successful, the Commission is not forced to act but it will be under strong moral obligation to do so, knowing that there will be a plenary debate in the European Parliament and a public hearing. Once issues of citizenship about which people have strong feelings are on the agenda, they tend to stick. The prospect of shrinking of the EU citizenry is an opportunity to reconfigure a European citizenship with the EU at its core, but one which is more inclusive, and on a continental scale.