

TUNNELING UNDER BREXIT

ECIT Foundation



Following the general election of 12 December, the UK will leave the EU on 31 January 2020 “Get Brexit done” won the day with a comfortable parliamentary majority even though the 47% of pro-Brexit voters were [less numerous](#) than the 53% supporting parties advocating a second referendum. But those parties were fatally divided and an implacable first-past-the-post electoral system means that even though the majority, according to all latest opinion polls, has swung towards “Remain”, the democratic decision is “Leave”.

Does this mean that young citizens in the UK are powerless? Certainly, they will have to be patient and accept that there are no quick or single solutions, but that over time it will be possible to change the narrative on Europe both in the UK and in the EU. The EU is constitutionally a Union of States *and citizens* and they can diverge. To say that the EU is only the sum of its Institutions and Member States - most frequently the official EU

reported in the media - is misleading. Such are the difficulties of reaching agreement among 27 governments, that the extent to which this depends on coalitions of the willing, not just formal majorities, but also European networks as well as lobbying by stakeholders and in the broader public interest, should not be underestimated.

Active European citizenship also finds expression in another Europe not necessarily connected to advocacy towards the EU or even membership but simply people and associations coming together across borders. Many people in the UK feel powerless after the results of the general election, but the UK remains an important player on the European scene and has always been more so in sociological and cultural terms than just politically. The withdrawal of the UK government from the EU Council, elected representatives from the European Parliament, representatives of regions and socio-economic interests from official advisory bodies -- all these changes on 31 January 2019 will leave a gap which pro-European interests in the UK should seek to fill in a different way, as non-state actors. It is possible to achieve a "soft" Brexit or none at all among active European citizens from the bottom up in another possible Europe, provided they follow their own agenda and resist the top-down pressures for a "hard" Brexit.

Here is such an agenda:

i) [Refuse the potential loss of European citizenship.](#)

Even if EU citizenship is linked to nationality of a Member State, does that mean that some 60 million can really be stripped of this status automatically on 31 January 2020? This issue was excluded from the divorce negotiations between the EU and the UK, so many questions are left unanswered. The EU Treaties, whilst being clear about how Union citizenship is acquired, are silent about how this status can be lost. There are no procedures or precedents for the mass loss of this status, which the Court of Justice of the EU has repeatedly declared as "[fundamental](#)". If the Court is right, how can the status just be swept to one side? The core of any citizenship status, as the right to have rights, is to protect the individual and private sphere against interference and the abuse of state power. In no democratic jurisdiction is there any question of removing a citizenship status except in exceptional circumstances and after due process. However, before and after the June 2016 referendum in the UK on membership of the EU there was no public information

warning of this loss, which was simply assumed. Moreover, a number of those who have built their private lives and those of their children on the assumption that they would remain life-long European citizens had no right to vote in the referendum and the subsequent general elections if they had been resident outside the UK for more than fifteen years. Only a minority of those who want to retain European citizenship can do so by acquiring the nationality of an EU Member State; conditions for naturalisation differ, requiring varying periods of permanent residence or ancestral links. Across the EU, according to [Eurobarometer polls](#), over half the population recognise that they are European citizens in all countries (including the UK) with an EU average which has grown over the years to 73%. What this really means is not clear when the terms EU citizen and European citizen are used interchangeably in political discourse. It is important now to find proper answers. This has been recognised by the European Parliament in a [Resolution on implementing and monitoring provisions on citizens' rights in the Withdrawal Agreement](#) adopted by a massive majority on 15 January 2020:

“20. Recalls that many UK citizens, both those resident in the UK and those resident in the EU-27, have expressed strong opposition to losing the rights they currently enjoy pursuant to Article 20 of the TFEU; proposes that the EU-27 examine how to mitigate this within the limits of EU primary law while fully respecting the principles of reciprocity, equity, symmetry and non-discrimination.”

Article 20 TFEU is the article which establishes Union citizenship. In point vi) we consider what this could mean and possible steps towards achieving a more inclusive citizenship within the EU with a broader version beyond. In the meantime, UK citizens who so wish should continue to assert their European identity, which cannot be taken away from them. Although they might suffer the loss of EU citizenship, they remain no less *European* citizens.

ii) [Protect the European rights of the 5 million and improve representation of all mobile European citizens](#)

In the run-up to the UK elections on 12 December 2019, a coalition of 30 organisations brought together by the Joint Council for the Welfare of Immigrants [wrote to party leaders](#) about their concerns that under the current EU settlement scheme it would be impossible to fulfil promises made during the referendum campaign that there would

be “no change for EU citizens already lawfully resident in the UK” and that they would “automatically be granted indefinite leave to remain in the UK and treated no less favourably than they are at present”. The letter points out that the scheme will never reach all the estimated 3.7 million EU nationals resident in the UK, especially those who are the most vulnerable and likely to fall through the cracks and become criminalised. The demand is to replace the application process with a declaratory scheme, and to provide for a right of appeal, guidance on EU citizens’ rights, and increase outreach efforts.

The demands of civil society in the UK are broadly supported by similar demands in the European Parliament’s resolution. If the UK makes it easier for all EU citizens to achieve permanent residence it will make it easier for its own 1.3 citizens to do the same elsewhere in the EU. Promises that there would be no change in status were made difficult to maintain when the 5 million became bargaining chips in the negotiations. These people have faced prolonged uncertainty over the last three years, and uncertainty as to what will happen after the transitional period at the end of 2020, particularly as regards rights to freedom of movement. Not surprisingly, there are increased demands among the 5 million to acquire full voting rights, including general elections, since recent experience has made them realise that they are not properly represented.

In addition to the points raised in its resolution of 15 January 2020, the European Parliament should call for more effective representation of all associations of citizens affected by the withdrawal of the UK. In turn, this raises the broader question of ensuring that the interests of the growing number of approximately 17 million so-called ‘mobile’ EU citizens, those living and working in another Member State, are represented by a European Commissioner, both the EU and national governments, and, should the Citizens’ Conference on the Future of Europe so decide, in the European Parliament via transnational seats.

iii) [Increase civil society participation to and from the UK in EU decision making, which will still influence domestic laws](#)

For many civil society organisations in the UK the challenge has to be faced that withdrawal from the EU does not mean that they should turn their backs on past European

activity. On the contrary, the activity should logically be stepped up since the government, although represented in the joint committee and other bodies of the EU, which can help shape EU rules, will no longer be a co-legislator and vote on new measures together with any members of the European Parliament. Therefore, advocates for environmental, health, safety and other standards, workers' or consumer rights can rely less on the government to defend the interests of UK citizens in Brussels and Strasbourg even though it will have to align domestic law and standards to those of the Union to maintain free and frictionless trade.

There is a watchdog role for advocacy groups in the UK both to lobby the EU and help ensure correct application of the equivalent to EU rules in Britain. This should best be done through European associations and coalitions since EU decision-makers prefer to engage with groups speaking with one voice across borders rather than with separate national interests. UK-based international, European or local associations concentrating on European activity may need to have representation in Brussels or another EU capital. [SECO \(Salon for European Civic Organisations\)](#) - where the [ECIT Foundation](#) is based in the European quarter & close to the European Parliament - is an example of a welcoming structure bringing together like-minded associations in the areas of citizenship, advocacy and democracy. One effect of Brexit and the risk of drifting apart in a nascent European civil society and public sphere should be to dust off old proposals for European associations and foundations, so that, despite the UK withdrawal, they have as good a chance of staying together as companies which do have such statutes.

iv) [European and international non-profit associations should reaffirm that they treat EU and non-EU members equally](#)

For many European associations, the withdrawal of the UK from the EU will make no difference, at least formally, if their statutes already provide that members can come from EU member states and other European countries on equal terms. Traditionally this has always been the position in most associations which are a bridge between EU organisations and those in applicant countries and the rest of Europe. *Now is the time to reaffirm this commitment to a wider Europe at the risk of seeing a drifting apart of the fragile strands of a*

peoples' Europe. Associations have always been able to go ahead of governments and the EU institutions and claim broader European allegiances stretching east and to the southern shores of the Mediterranean and have invested in developing such links through training programmes and encouraging civil society development. The British voluntary sector was very active during the period of EU membership in supporting civil society development in the countries of Central and Eastern Europe. The European Commission supported reaching out to associations in applicant countries as part of the process of preparing for membership of the EU. There now needs to be a process of reaching out to associations in a former member state and refusing the divisions created at an institutional level. This adjustment will occur quite naturally among social movements operating across borders and major campaigns are unlikely to be affected. The effort to keep links with the UK associations will be greater though for associations which are already struggling and under-resourced. From 31 January 2020, UK citizens will no longer be allowed officially to launch or sign a citizens' initiative (ECI), whereby if over 1 million signatures are gathered, the Commission must consider a demand for a new European law. Should the UK be left out? Should there not in any case be attempts by ECI organisers to encourage parallel initiatives or petitions in neighbouring countries? To be effective, European citizenship, perhaps to a greater extent than national citizenship, has to rely on a transnational civil society and on the extent to which those claims can be grouped together across borders.

v) [Civil society in the UK and the EU should lobby for a broader European citizenship of belonging in EU programmes](#)

To an extent EU programmes such as Erasmus exchanges and those on culture, education, youth or research do already extend beyond the EU and can be said to acknowledge a wider continental-scale European citizenship, especially with their emphasis on being an active European citizen. One impact of the UK withdrawal from the EU could be that the wider European neighbourhood becomes politically more important and so offers civil society organisations an opportunity to promote a vision of a much wider and more open-looking continent. The departure of the UK is an opportunity for European and international associations to speak out and reaffirm their commitment to this wider Europe. The operation of networks over the broader geographical area for exchange programmes, sharing best practices and joint action might not be as affected by the UK withdrawal from the EU as many might fear, provided there is active advocacy. The [political](#)

[declaration](#) agreed by both sides underlines that such links should continue as part of a close partnership. The real uncertainty here relates not so much to high profile and well-established initiatives which will adjust to the new situation but more to minority interests and less high profile causes which have relied on European funding to participate in European activity and networks. Participation in this other Europe will depend, however, on the willingness of the UK to contribute financially to EU programmes and on the priority given under the next Multi-annual Financial Framework (MFF) to action beyond the EU borders.

- vi) [Steps should be taken towards a more inclusive European citizenship within the EU and beyond.](#)

How could the potential loss of EU citizenship be mitigated as proposed by the European Parliament in the resolution quoted above? The question should be put to the Conference on the Future of Europe in which citizens will participate on equal terms with civil society and the EU institutions. At the same time the Commission should raise the issue in the public consultation it will launch on the tri-annual Report on Union Citizenship. This report can lead to proposals under Article 25 of the TFEU, which allows new rights to be added without Treaty revision. It is high time for a debate about European citizenship beyond opinion polls. It is high time we found out more about how citizens themselves see this status and its future development. So far, the ECIT Foundation has contributed with its [Guidelines on European citizenship](#) and [annual Summer University](#) by bringing together academics, civil society representatives and policy makers. ECIT has recalled in the background documents for the Summer University that human rights, migration and other civil organisations have consistently demanded, since the entry into force of the Maastricht Treaty 26 years ago, that EU citizenship should be granted not just to nationals of Member States but also to third country nationals resident in the EU.

Under what condition could acquisition of nationality of a member state become easier and more equal across the EU or could Union citizenship be granted also on the basis of residence? Could there be a form of European citizenship for individuals outside the EU who see themselves as European citizens? As the European Parliament recognises in its resolution, a paradox of Brexit is that more people in the UK see themselves as European citizens than ever before. The same could be true of people in Switzerland, Norway or

Iceland as well as the applicant countries in the Western Balkans, who have not been asked or expressed an opinion. Such a proposition raises many questions: how to avoid diluting EU citizenship by recognising that being a citizen of Europe stretches to the whole continent? If it is recognised that membership of the EU is at the core of this transnational citizenship, how to do so without introducing a two-tier status? If the idea floated in the European Parliament would be to offer European citizenship in exchange for an individual contribution to the EU budget, how could this work without making European citizenship an elitist concept? What would the principles referred to in the resolution mean in practice? These are exactly the kind of difficult questions that a two-year Conference on the Future of Europe should be designed to answer.

The agenda proposed here recognises that according to its Treaties the EU differs from other international organisations as one which groups not only States, but also citizens. Reaffirming active European citizenship round its components of rights, participation and a broader continental sense of belonging is the best response to the potential loss of EU citizenship and a shrinking instead of an expanding EU citizenry.