TUNNELLING UNDER BREXIT

Following the general election of 12 December, the UK is now set to leave the EU on 31 January 2019. “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 solutions to correcting this national mistake, but that over time it will be possible to change the narrative on Europe both in the UK and in the EU. The extent to which the EU is only the sum of its Institutions and Member States, the official EU reported in the media, is misleading. Such are the difficulties of reaching agreement among 27 member states, 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 under-estimated. 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. People in the UK feel powerless after the results of the elections, but the UK remains an important player on the European scene and has always been more so sociologically than politically. The withdrawal of the 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.

How should such a gap be filled? What would be the priorities? Here are some suggestions:

1. Refuse the potential loss of European citizenship. From the volume of personal testimonies, complaints, petitions and citizens’ initiatives since the referendum of 2016, the divorce from the EU has paradoxically increased the attachment to EU citizenship. Can 65 million people really be stripped of this status automatically on 31 January 2020, even if their European rights will change? When the UK leaves it will be no longer be represented in the EU institutions so UK citizens-except those based in the EU- should lose the right to vote and stand in the European elections. Whether they should lose the right to sign a citizens’ initiative is more open to question when as part of the future free trade agreement, UK laws are likely to be aligned on European legislation. The EU Treaties whilst being clear about how Union citizenship is acquired are silent about how it can be lost. No procedures for the loss of this status are laid down and the issue of citizenship has been excluded from the mandate of the negotiations for the Withdrawal Agreement. 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. This is not just an issue of respecting that UK citizens living in the EU have built their lives on the understanding that they are European citizens for life. It is also a question of recognising that in no democratic jurisdiction is there any question of removing a citizenship status except in exceptional circumstances and with due process. It is important therefore that UK citizens should continue to assert their identity which cannot be taken away from them as European citizens. It is important that they should do so also for people within the EU, if this status is so fundamental in practice as it has been described by the European Court of Justice. Who is a European citizen and whether the geographical borders of this status should stop at the borders of the EU should be an issue for the debate on the future architecture of Europe.
2. Protect the European rights of the 5 million. In the run-up to the UK elections, 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 of the 3.7 million EU citizens especially those who are the most vulnerable and likely to fall through the cracks and become criminalised. The demand is to change the application process into a declaratory scheme, and to provide for a right of appeal, guidance on EU citizens’ rights and increase outreach efforts. 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 in the EU. Promises made originally that there would be no change in status were made difficult to maintain when the 5 million were made a bargaining chip in the negotiations and have faced a period of 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, since the process has made them realise that they are not properly represented.
3. Participate in an EU on which legislation in the UK is to be aligned. For many civil society organisations in the UK the paradox 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 increase 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 them together with any members of the European Parliament. Therefore, advocates for environmental, health , safety and other standards 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 on 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 back home. This should best be done through European associations and coalitions since EU decisionmakers prefer to engage with groups speaking with one voice across borders than with separate national interests. For the majority of European associations adjusting strategy to the UK withdrawal presents no real change since they have members already beyond the EU which are treated equally as coming from neighbouring or applicant countries. It would help though to counteract the rift of drifting apart which could come from Brexit if European associations could deliberately reaffirm this approach and commitment to a wider Europe.
4. Claim a broader European citizenship of belonging. 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 Europen citizenship. This sense of a wider Europe is even more pronounced in the work of non-profit associations and foundations active in Central Europe, the Mediterranean and the Middle east. The Europe of social movements has shown a capacity to spread and link people wherever they can find common cause without distinction between participants coming from countries which are members of the EU or the Council of Europe with its 46 member states or elsewhere. One impact of the UK withdrawal from the EU could be that the wider European neighbourhood is redesigned and 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 which they have in general supported. The departure of the UK is an opportunity for European and international associations to speak out and re-affirm their commitment to a 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. 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, which should happen according to the political declaration.

This tentative agenda does no more than recognise that according to its Treaties the EU differs from other international organisations as one which groups not only States, but also peoples. Reaffirming active European citizenship round its components of rights, participation and a broader continental sense of belonging is the best response to the negativity of Brexit. This provides scope to revisit the issue of withdrawal of a State from the formal structures of membership of the Institutions and examine how the divisive consequences of that situation could be mitigated. This could be done by recognising the rights to permanent European citizenship, whilst maintaining and developing the links across the civil societies. Starting with a more practical and ambitious approach towards developing a future European public sphere beyond the borders of the EU, the seeds can be sown both to keep alive the process of enlargement and for the next generation to come to power in the UK to seek to join the EU once more.