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BREXIT AND CITIZENS' RIGHTS: IS THE WITHDRAWAL AGREEMENT ENOUGH?

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On 31st January 2020, the UK left the European Union, opening the so-called "transition period".

On its part, the European Parliament approved the [Withdrawal Agreement](#) (WA) by 621 votes in favor, 49 against and 13 abstentions. The EP President David Sassoli ensured that: *"Fifty years of integration cannot easily be dissolved. We will all have to work hard to build a new relationship, always focusing on the interests and protection of citizens' rights"*.

Although Brexit might seem ended, almost 4 years from the referendum, the surrounding uncertainty is not done. A lot of questions arises from the UK departure, as the protection of citizens' rights, to which it is dedicated the second part of the *Withdrawal Agreement*. This short article aims to briefly review these provisions, and to better understand what is going to happen at the end of the transition period.

The Withdrawal Agreement

First of all, it should be specified that the transition period can be extended once, from one to two years, but this decision must be taken by the EU-UK Joint Committee before 1st July 2020. For now, it is supposed to

end on 31st December 2020.

During this period, citizens' rights are going to be ensured, both for EU citizens and Britons living across EU, including frontiers workers. It will be possible to *travel* with a valid passport or national identity card. However, five years after the end of the transition period, the host State may decide to no longer accept national identity card without a chip which permits identification. Regarding *residence rights*, nothing changes for EU citizens and Britons, including frontiers workers, who exercised their right to reside before the end of the transition period. Moreover, no entry or exit *visa* will be required during the transitional period, but once ended the host State could require it for family members who joined after December 2020; in this case, the host State should facilitate the visa process. Permanent residence will be acquired after a continuous period of 5 years, including the time before and after the transition period.

At first glance, the Withdrawal Agreement seems to guarantee a high level of protection; despite the fact that millions of citizens are losing their status, rights are still granted. Nonetheless, it becomes natural to wonder whether the WA is enough to ensure a continuous level of protection, and if citizens are going to face any kind of *burden*. Maybe, it is still too soon to find an answer to these questions, but it is possible to look at the issue from an administrative perspective. For example, it is well known that EU citizens are currently required to register their status (settled or pre-settled) through the UK Settlement System. At the same time, Member States could require to British nationals, who reside in their territory, to apply for a *new residence status*. According to the WA, the application process should follow these conditions: the purpose should be to verify if the applicant has the resident right; the deadline cannot be less than 6 months after the transition period (for example, for the UK Settlement system is 30 June 2021); a certificate of application for the residence status shall be issued immediately, free of charge or for a charge not exceeding that imposed on citizens or nationals of the host State for the issuing or similar documents. Overall, the WA ensures that administrative procedures are simple, smooth, transparent, and that the application will proceed without any unnecessary burden. During the transition period, a

host State can allow applications for residence status or documents, on a voluntary basis. If the application is refused during this period, the applicant can apply again. Rights of employment or self-employment are still granted for residents.

What next? A new immigration system for the UK?

But that is not all. In fact, besides the political will of maintaining the focus on citizens' rights, expressed by the Presidents of the EU Institutions, after the transition period the match will be played on *a national level*. For example, we could wonder what kind of [immigration system](#) is going to be applied by the UK Government, since "taking back control" of immigration was one of the key themes of the Leave campaign in the 2016 referendum. The United Kingdom currently adopts a points-based system for non-EU citizens'. According to this system, there is a number of fixed visas a year, awarded because of salary, English level and other skills. Four different kinds of visas are available for:

- Students;
- Skilled workers;
- Temporary workers;
- "High value immigrants" for exceptional talent or major investors.

The former government set-out plans for a post-Brexit immigration system in which skilled worker with a minimum salary of 30 000 pounds will need to be sponsored by the employer. The current government has not announced yet the final migration system, although Boris Johnson declared that a "global talent" will replace the current "exceptional talent", but the cap on numbers will be removed.

Beyond Brexit: do we need a reform of EU Citizenship?

Without any doubt, Brexit has reopened the discussion about a possible reform of EU citizenship. It could be argued that this turning point in EU history should be considered as an occasion to finally solve the question of EU Citizenship autonomy from [national citizenship](#). On the one hand,

Dora Kostakopoulou has supported the [disentanglement](#) of European citizenship from Member State nationality since the mid-1990s. Her main argumentation is that statelessness should not lead to the loss of European citizenship (especially after *Rottmann*), since citizens' are directly bonded with the Union, thanks to the rights established in the Treaties. In her perspective, statelessness is an externality generated by the State, without the individuals' consent, so giving EU law protection could be a way to avoid the massive loss of rights (which is already happening with Brexit, since millions of citizens will lose the *fundamental status*). In a nutshell, what she proposes is a EU citizenship by choice, in addition to the traditional one. Everyone who his connected with the EU and who has spent 5 years as a permanent resident in its territory should be able to acquire EU citizenship. This implies, at least, a Treaty reform plus the political will of the Member State to move in this direction.

In the political sphere, Guy Verhofstadt supported the adoption of the so-called "*associate citizenship*", to guarantee the protection of citizens' rights after Brexit. This proposition was [criticized](#), in particular, by Dimitry Kochenov. He argues that the decision taken by British people should be accepted, since respecting national constitutional traditions and democracies is an obligations of the EU, as the Article 4 (2) TEU establishes. On a more pragmatic ground, Kochenov refuses the creation of associate EU citizenship because it fails to respect reciprocity in future relations with UK, since the EU will lose the power to negotiate the same conditions and rights for its citizens. Finally, he rejects the argument of *acquired rights*, because an expansive definition of this principle can make the idea of activate Article 50 TEU more attractive. In fact, retaining EU citizenship, the loss of EU membership can seem easier and less painful.

From the chaos generated by the Brexit saga it certainly emerges that the actual concept of European Citizenship does not reflect anymore the state of the European Union. Article 20 TFUE shows a EU citizenship strictly linked to the Member State nationality, an old fashioned way to describe a lot of European citizens who exercise their rights every day, and whose lives orbit around them. It does not describe the sense of European identity that these people feels. However, at the same time, it cannot be

denied that EU Citizenship is not only freedom of movement and that a lot of people does not feel European at all. European citizenship “by choice” might be a double-edged sword as it could worsen the gap between who advocate for a total realization of the *fundamental status*, and who is against it. On the contrary, EU citizenship should be an element of cohesion. A glimmer of hope can be found in the Conference for the Future of European Union, since it aims to deepen citizens’ involvement in the EU decision-making process, which could contribute to strengthen the sense of European identity.

Brexit might be done, but *how* it will be done it is another matter. And the big question of the day after Brexit is where the European Union is going.