

5 TAKEAWAYS ON BREXIT:
Outlining Possible Scenarios
for a New UK-EU Relationship
and their Impact on Citizens

POLICY DIGEST



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Introduction

Eight months on from the EU referendum in the UK, it is still not clear what shape the new relationship between the country and its EU partners will take. These will be the subject of negotiations that are expected to start following the triggering of Article 50 of the Treaty of the European Union (TEU), which is anticipated to occur in March 2017.

Several studies have looked into the potential economic and financial impact of Brexit considering different scenarios, as well as into the consequences of the UK withdrawing from the Single Market under potential new arrangements with the EU. None of them has, however, thoroughly analysed the impact of the UK's withdrawal on the rights of the estimated 4 million citizens who are likely to be directly affected by the outcome of the negotiations on the new UK-EU relationship, including the 3 million EU citizens residing in the UK and the 1.2m British citizens living across the EU¹.

Partnership and objectives

The European Citizen Action Service (ECAS), in partnership with the EU Rights Clinic, the European Disability Forum (EDF) and the New Europeans, has produced a thorough analysis which considers how citizens' rights will be impacted under different scenarios, in an attempt to shed light on the consequences of this political event, which is unprecedented in the EU's history, and to provide some clarity in a climate of high political and legal uncertainty. Indeed, while the EU withdrawal procedure is foreseen by Article 50 TEU, this will be the first time that a Member State has ever contemplated invoking it. Only with an in depth knowledge of the different options available will citizens and civil society be able to identify the best possible deal for them to advocate for, both before and during Brexit negotiations. It is the purpose of this study to support them in doing so.

Structure and methodology

This study is divided into two parts. The **first part** analyses the impact of Brexit on the main series of socioeconomic and political rights that are bestowed on citizens by virtue of their EU citizenship, including the right of entry, the right of residence, the right to work, social security rights, the right to establish a business and to provide services, consumer protection rights, passenger rights, the right to non-discrimination, voting rights and the rights of access to EU institutions. The **second part** looks into the impact of Brexit on the ability of UK-based organisations to continue to access EU public funding streams, an issue which has raised a lot of concern, especially from UK universities and research-driven entities, which are among the top beneficiaries of EU funding in the UK.

¹ Gower, M. (2016), "Leaving the EU: How might people currently exercising free movement rights be affected?", *Commons Briefing papers* CBP-7525, 27 June 2016. [online] Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7525>.

Impact of Brexit on EU rights: Main findings

With regard to the impact on EU Rights (first part), the analysis considers five scenarios, including a baseline scenario of no Brexit and four other scenarios based on existing arrangements with other countries:

1. The 'Bremain Option' – The UK remains in the EU (baseline scenario)
2. The 'Norway Option' – European Economic Area (EEA) membership of the Single Market
3. The 'Switzerland Option' – Bilateral agreements with the EU
4. The 'Canada Option' – A Free Trade Agreement (FTA) with the EU
5. The 'Turkey Option' – An Association Agreement with the EU

The first scenario of no Brexit, which entails retaining full EU membership, is taken as the baseline scenario to allow for a comparison with the other four, as it reflects the situation at the time of writing. Under this scenario, Cameron's failed deal for a New Settlement for the UK in the EU is also examined. While this option is no longer plausible, as it was abandoned following the 23 June referendum, it already contained some of the key 'red lines' expressed publicly by the British government and it is, therefore, worth analysing for forecasting purposes. The other four scenarios include two 'soft Brexit' options (EEA membership and Swiss 'bilaterals') and two 'hard Brexit' options (a customs union, as in the case of Turkey, or a free trade agreement, like the one the EU has recently concluded with Canada). The fifth scenario that could have been envisaged and which qualifies as the hardest version of Brexit – trading under World Trade Organisation rules – has not been included as it does not bestow any rights on citizens to enter, reside or work in other countries.

Analysis by scenario

Of all the five scenarios considered, the best possible deal for citizens' rights would be one based on Norway's membership of the EEA (*scenario 2*), which would allow the UK to retain full access to the Single Market. This would ensure the free movement of people, goods, services and capital. As shown in the comparative table below, UK citizens would retain most of the rights they currently enjoy as EU citizens under this scenario. UK citizens under this scenario would, however, lose the rights to vote and stand in European and local elections, to participate in an ECI and to seek diplomatic or consular protection from another EU country in a third country where the UK does not have a consular presence, since these political rights are only bestowed on EU citizens. The right to address and to correspond with EU institutions would only be kept by UK nationals legally residing in the EU. Finally, under Norway's model, the UK would not be bound by all standards of protection against discrimination laid down by EU law.

The second best option would be Switzerland's model based on bilateral arrangements (*scenario 3*), which would oblige the UK to essentially preserve freedom of movement rights (including the rights relating to residence, work and social security), albeit with some potential limitations concerning permanent residence

and the right to non-discrimination. The EU passenger rights package would also be maintained for the most part, while there would be some important limitations concerning freedom of establishment and the provision of cross-border services, as well as in the area of consumer protection. Both of these scenarios would, however, oblige the UK to guarantee freedom of movement of people, which, the British Prime Minister has acknowledged, represents a “red line” in the exit negotiations. Therefore, neither of these options, which would correspond to a so-called “soft Brexit”, would currently meet what is presently known about the UK’s negotiating position.

Comparative table: EU-UK models for a new relationship									
	Right of entry	Right of residence	Right to work	Social security rights	Right to do business and provide services	Consumer protection & passenger rights	Right to non-discrimination	Voting & political rights	Access to EU institutions
EU Membership (baseline scenario)	Green	Green	Green	Green	Green	Green	Green	Green	Green
Draft New Settlement for the UK	Green	Yellow	Yellow	Yellow	Green	Green	Yellow	Green	Green
Norway Option	Green	Yellow	Green	Green	Green	Green	Yellow	Red	Yellow
Switzerland Option	Green	Yellow	Green	Green	Yellow	Yellow	Yellow	Red	Yellow
Canada Option	Red	Yellow	Yellow	Red	Yellow	Yellow	Yellow	Red	Yellow
Turkey Option	Red	Yellow	Yellow	Yellow	Yellow	Yellow	Yellow	Red	Yellow

Full Access	Green
Partial/Voluntary/Special Arrangement	Yellow
None	Red



The now-abandoned 'New Settlement for the UK' with the EU (analysed under *scenario 1*), which formed the basis upon which the former Prime Minister asked the British electorate to cast their vote in the referendum, is also not considered a viable option. Not only was this rejected by the UK electorate in the June referendum, but it would also imply the UK remaining a full member of the Single Market. This arrangement would have essentially consisted of amendments being made to EU rules on free movement, which would have permitted limited discrimination between EU citizens and UK nationals regarding access to “in-work” benefits. However, other EU rights would have remained unaffected. Although this option is no longer viable at the time of writing, it does provide some indication of the nature that future restrictions on the freedom of movement could take in the event that the UK was to somehow accept limited free movement of EU citizens in the UK post-Brexit.

The next option contemplated the UK and the EU negotiating a comprehensive free trade agreement, such as the one with Canada (*scenario 4*). This would only provide UK citizens living in the EU and EU citizens residing in the UK with some of the rights that they currently enjoy. The EU-Canadian free trade agreement (CETA)² does not provide for the freedom of movement of persons or freedom of establishment, but it does allow temporary work-related migration of key employees and the self-employed between the EU and Canada without requiring prior approval, provided it is for a limited duration, ranging from a year to three years depending on the nature of their activity. EU rules already facilitate the mobility of third country nationals like Canadians who come to the EU to undertake highly-skilled work or engage in research, studies or seasonal work. In all other cases, though, rights of entry, residence and work are subject to national immigration rules of the host country. The EU rules also provide a visa exemption for Canadian citizens who stay in the Schengen area for short stays of up to 90 days. In addition, EU free movement rules also bestow rights of entry, residence and work on foreign family members of EU citizens. By virtue of CETA, Canadian citizens and EU citizens would also enjoy some right to equality of treatment in limited fields. EU rules on consumer protection and passenger rights are not exclusively dependent upon holding EU citizenship and can therefore also be claimed by non-EU nationals living in the EU. The same is true for rights of access to EU institutions, to which all persons who are resident in the EU are entitled. These rights would, therefore, be partially maintained if the UK were to follow Canada’s model. Under such a scenario, EU rights relating to the coordination of social security would be fully lost, as well as those relating to voting and political participation.

Finally, if the UK and EU were to move into an association involving a customs union, as is the case for Turkey (*scenario 5*), UK citizens and EU citizens could still partially enjoy some of their current rights. The EEC-Turkey

² EU-Canada Comprehensive Economic Trade Agreement.



Association Agreement does not foresee freedom of movement of people. Unless they are family members of an EU citizen, Turkish citizens have to abide by the immigration rules of the EU country where they seek to relocate in respect of residence formalities and access to work, or, alternatively, with the harmonised EU rules relating to research, studying, seasonal work, highly-skilled work or intra-corporate transfers. In addition - unlike Canadian citizens - Turkish citizens are required to hold a valid visa to enter the EU. The EU and Turkey are, however, currently negotiating a visa liberalisation policy, which could emerge in the foreseeable future and would ease travel requirements between the two countries. Nonetheless, the Association Agreement does provide for the gradual accumulation of residence rights by Turkish workers who are legally employed in an EU country and are duly registered as belonging to its labour force, as well as their family members. Like other third country nationals, Turkish citizens also benefit from EU rules on the coordination of social security in the EU. Although the Association Agreement does not cover consumer protection and passenger rights, Turkey has sought to align its laws with the EU's rules on consumer protection and passenger rights in anticipation of its future accession to the EU. In addition, rights of access to EU institutions, which are not dependent upon holding EU citizenship, would also be retained, since these can be exercised by all persons legally residing in the EU.

Analysis by right

Of all the scenarios considered, the **right of entry** is only fully secured, on equal terms with full EU membership³, under the Norway and Switzerland models, as well as under the abandoned New Settlement with the UK. Neither Canada's free trade agreement with the EU nor Turkey's Association Agreement provide for the free movement of persons. Therefore, the right of entry of EU citizens into Canada and Turkey remains subject to their respective immigration laws. Likewise, the right of entry into the EU of citizens from these two countries is subject to the common rules on entry into the Schengen area or to national immigration rules if entering a non-Schengen Member State.

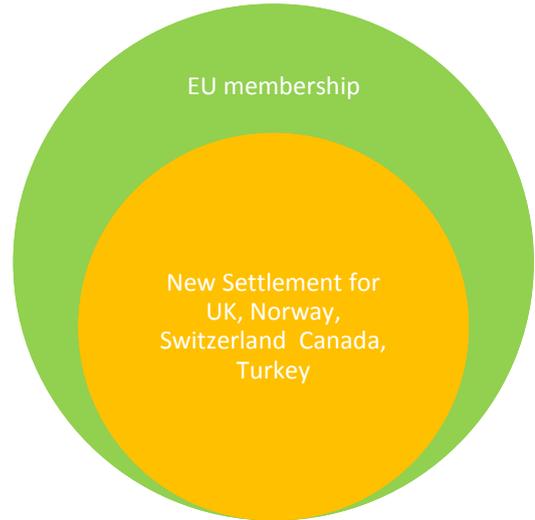
As for the **right of residence**, EU membership is the only scenario where this right can be fully enjoyed. While the right of residence is guaranteed under the EU's agreements with Norway and Switzerland, it is subject to particular arrangements. The abandoned New Settlement with the UK would also have placed further restrictions on the right of residence of EU citizens. Under the agreements with Canada and Turkey, there is only a partial access to this right through the existing EU migration rules that provide for the right of residence for third country nationals who are highly-skilled workers, seasonal workers and workers on intra-corporate assignments, as well as those engaging in research, studies, pupil exchanges, unremunerated training or voluntary service.

³ In the figures below, green shading implies full access to a particular right; orange shading implies either partial or voluntary access or ~~that~~ special arrangements/restrictions are in place, and red shading implies no access.

Figure 1: Right of entry



Figure 2: Right of residence

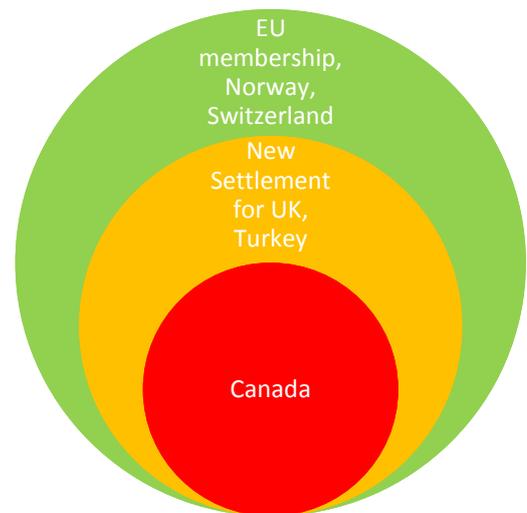


As for the **right to work**, Norway's and Switzerland's arrangements provide for the free movement of workers on parallel terms to EU membership. Under all other scenarios this right is guaranteed only to a partial extent. The New Settlement with the UK would have introduced significant restrictions to in-work benefits for newly arrived EU migrant workers to the UK. Neither Canada's nor Turkey's agreements guarantee a general right to work for the benefit of EU citizens in these countries and vice versa as regards Canadians and Turkish nationals wishing to work in the EU. However, Canada's FTA with the EU does seek to facilitate the exchange of key professionals such as specialists or senior managers on a temporary basis. The right of Turkish nationals to move to an EU country to take up their first employment is governed by the laws of the country of work, unless they are family members of an EU national, in which case they benefit from the same rights as their EU relative. However, after being legally employed in an EU country for at least a year, Turkish workers start accumulating working rights in the EU.

Figure 3: Right to work



Figure 4: Social security rights



Social security rights provide for three different models of participation. The Norway and Switzerland models fully incorporate the EU's rules on the coordination of social security rights for the benefit of both EU citizens residing in these countries and Norwegian and Swiss citizens residing in the EU. The New Settlement with the UK would have allowed the British government to restrict access to benefits by EU migrants who were newly arrived in the UK, but without such restrictions automatically applying to UK citizens living elsewhere in the EU. Turkey's Association Agreement also extends the benefit of EU rules on social security coordination to Turkish workers in the EU. Although the rules are not fully implemented, the EU has also extended the benefit of its rules to all third country nationals residing in the EU. In addition, EU citizens living in Turkey are not able to enjoy the full benefit of EU rules on the coordination of social security. On the contrary, Canada's FTA with the EU does not contain any rules on the coordination of social security. Therefore, the social security rights of EU citizens in Canada are solely determined by Canada's legislation, and the social security rights of Canadian citizens in the EU are determined by the legislation of the country where they work or reside, subject to compliance with EU rules on the coordination of social security.

The **right to do business** and to **provide services** in the EU, together with the rules on **consumer protection** and **passenger rights** offer two degrees of participation across the scenarios considered. Only EU membership and Norway's arrangement provide citizens with the right to establish themselves on a permanent basis in another country for professional purposes or to provide services there on a temporary basis. Likewise, the full package of EU consumer rules and passenger rights are secured through EU membership and Norway's participation in the EEA. In all other scenarios, there is only partial access to these rights. The New Settlement with the UK would not have affected these rights.

Switzerland's bilateral arrangements with the EU do not provide for Swiss companies to freely establish themselves in the EU and vice versa. However, they do allow individuals to establish themselves in Switzerland on a self-employed basis or to provide services to customers residing there. Switzerland has also chosen to voluntarily comply with some EU rules on consumer protection and it fully applies the EU air passenger rights package.

Canada's FTA with the EU enables cross-border trade in services by companies and individuals, although some sensitive sectors are excluded. Canadian companies wishing to supply services and goods in the EU and vice versa have to comply with the relevant consumer rules of the country where they trade. In addition, the benefits of EU rules on consumer protection are not restricted to EU citizens, but also apply to any person buying goods or services in the EU, which would, for instance, include Canadian and Turkish citizens living in the EU. Finally, Canada is not bound by the EU passenger rights package, but the rules apply to passengers travelling with Canadian carriers when they start their journey within EEA territory, as well as to any Canadian air carrier holding a valid license to operate in an EEA country.



Turkey's Association Agreement contains provisions on the right of establishment and the freedom to provide services, but they are yet to be implemented. For the time being, the conditions under which Turkish citizens can establish a business or provide services in an EU Member State are determined by national law, and vice versa as regards doing EU citizens doing business in Turkey. In the area of consumer protection, Turkey has sought to align its rules with those adopted by the EU. For instance, Turkey has adopted a regulation on air passenger rights that is modelled upon the EU passenger rights package. EU rules also apply to passengers travelling on any flight landing in Turkey that originates within the EEA.

Figure 5: Right to do business, provide services, consumer protection and passenger rights

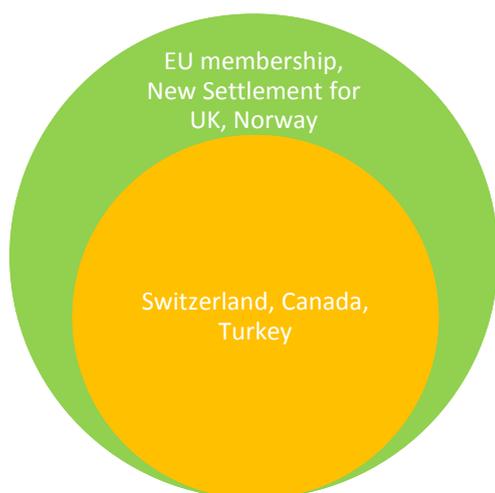


Figure 6: Right to non-discrimination



The **right to non-discrimination** on the grounds of nationality, racial or ethnic origin, religion or belief, disability, age or sexual orientation is only fully guaranteed through EU membership. Under all other scenarios, there are some reciprocal provisions which prohibit discrimination, essentially on nationality grounds, between citizens from these countries and citizens from the EU, but the majority of EU legal instruments that actively aim to combat discrimination are not applicable to them.

Figure 7: Voting and political rights

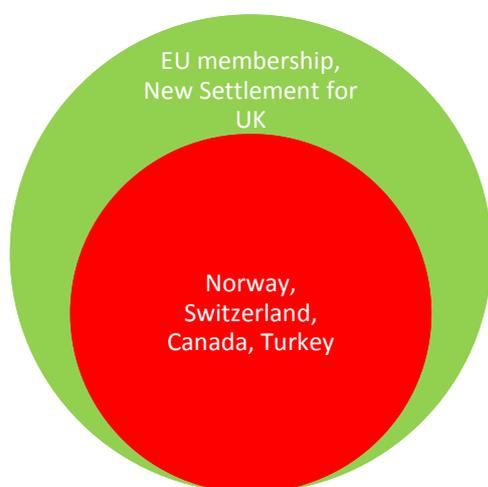
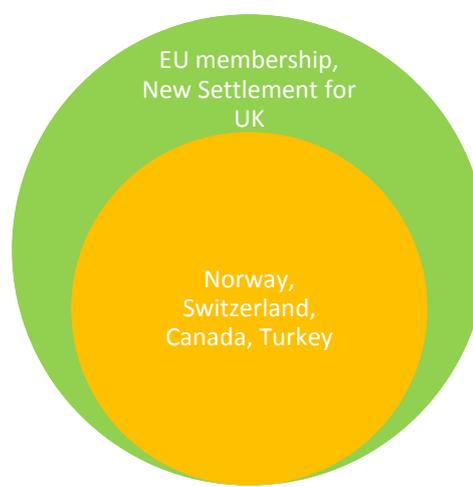


Figure 8: Access to EU institutions



Voting and political rights (including the right to stand and vote in EU parliamentary and local elections, to seek consular protection from another EU country abroad and to participate in a European Citizens' Initiative) are limited to EU membership. The New Settlement with the UK would not have affected these rights. Under all other scenarios none of these rights can be exercised by nationals from these countries living in the EU or vice versa, because these rights are conditional upon holding EU citizenship.

Finally, what is referred to in this study as **"access to EU institutions"** concerns the rights enabling citizens to interact with EU institutions, by filing petitions with the European Parliament, submitting complaints to the European Commission, requesting access to EU public documents or, in cases of maladministration by EU institutions, seeking redress before the European Ombudsman. These rights would have remained untouched under the New Settlement with the UK. In addition, such rights of access can be exercised by citizens from any non-EU country provided that they reside within the EU. With the exception of Norway's model, the other models do not grant any right of correspondence with national institutions to EU citizens residing in Switzerland, Canada or Turkey.

Conclusions

As our analysis demonstrates, there is no "best alternative" to EU membership where all EU rights currently enjoyed by EU citizens in the UK and UK citizens in the EU can be fully preserved. Under each of the scenarios presented, these rights are guaranteed to varying degrees. A choice will therefore have to be made in the course of the exit negotiations as to which rights should be retained. It should, however, be noted that this study only analyses existing models of agreements that have been concluded between the EU and other countries. It should not be excluded that, in the course of exit negotiations, other kinds of arrangements could be considered. While the softer Brexit options with full or almost full preservation of the free movement of persons do not seem realistic at the time of writing, efforts should be made to protect the acquired rights of EU citizens already living in the UK and UK citizens living elsewhere in the EU in order to address the legal uncertainty faced by these groups. In addition, schemes should be discussed to facilitate mobility and exchanges between the EU and the UK, taking into account that freedom of movement is still seen as the most positive EU achievement by citizens from across the EU, including the UK⁴.

Finally, whatever choices are ultimately made, these should be arrived at in close consultation with citizens, social partners and elected representatives, and should not be driven solely by governments without sufficient regard to the concerns of those who will be most affected: the citizens of Europe.

⁴ European Commission (2016), "Public opinion in the European Union", *Standard Eurobarometer 86*, Autumn 2016, p.25. Online Available at: <http://ec.europa.eu/COMMFrontOffice/publicopinion/index.cfm/ResultDoc/download/DocumentKy/76422>

Access to EU funding: Main findings

The **second part** of the study, which analyses the impact of Brexit on access to EU funding by UK-based entities, also considers all the above scenarios, as well as two additional ones. The first additional scenario concerns the EU Neighbourhood countries, which enjoy a privileged position as regards their access to EU funds compared to other regions in the world due to their proximity to the EU. The second additional scenario concerns the EU's development and cooperation programmes, whose key beneficiaries are developing countries.

It follows from our analysis that Brexit should not have dramatic consequences on access to EU public funds if the UK were to agree to contribute to the EU budget in order to maintain the participation of its organisations and citizens in the different EU funding programmes. This could be achieved through an all-encompassing agreement that would enable the UK to secure its participation in a majority of EU programmes or, alternatively, on the basis of bilateral agreements concluded with the EU in respect of individual programmes. The only EU funding programmes where the UK will automatically be excluded from participation following Brexit are the funding schemes under the European Structural and Investment Funds, as well as those relating to the EU's common agricultural and fisheries policies, which are only open to participation by EU Member States. Nonetheless, considering the recent experience of Switzerland following its referendum calling for immigration controls on EU migrants, the imposition of restrictions on the freedom of movement, or its outright repeal, could mean that UK organisations will no longer be eligible for participation in some funding programmes on the same terms as they are today.

Whatever formula is agreed, it is in the interest of both the UK and the EU to ensure that the UK continues to contribute to the EU budget so that UK-based entities can maintain their participation in EU projects in partnership with their peers across the EU.

Further information about the different models of participation in EU funding programmes can be consulted in the full study.

Over eight months after the EU referendum in the UK, the details of the UK's future relationship with the EU are yet to be formulated. Several studies have looked into the economic consequences of Brexit, but no study has given a thorough analysis of the implications for the rights of the nearly 4.5 million EU citizens most affected by Brexit – that is, EU nationals currently living in the UK and Britons living elsewhere in the EU. This study aims to shed some light on what different scenarios could mean for citizens' rights in order to help citizens identify the best option for them and enable them to lobby their political representatives both before and during Brexit negotiations.

