

Event Report – Brexit and Citizens’ Rights: Where Do We Go From Here?

Bozar, Brussels – June 20, 9am-2pm



Almost a year on since the EU referendum in the UK, it is still unclear what will happen to the rights of the estimated 3.2 million Europeans living in the UK and the 1.2 million Britons living elsewhere in Europe. In her article triggering Article 50 TEU on 29th of March, Theresa May made the interests of citizens a priority in the negotiations and called for an early agreement about their rights. The European Council guidelines for Brexit negotiations on 29 April, as well as in the European Parliament’s red lines on Brexit negotiations, also made this a priority. However, none of the parties has yet elaborated what this will mean or what will be done in practice.

The event was attended by over 120 people in person and received over 380 views online.

Citizens should not be made to suffer from the UK’s decision to withdraw from the European Union

Stefaan De Rynck, an adviser to Michel Barnier at the [Article 50 Taskforce](#), opened the conference with a defence of the benefits EU citizens have brought to the UK and the importance of settling the issue of citizens’ rights before the Brexit negotiations can progress to the next stage.

He began by saying that “Brexit remains a sad story” and defended the contribution EU citizens have made to the UK economically and socially, from high-skilled to low-skilled workers. He noted that, in this situation, the Article 50 process is the only way to give rights directly to the citizens concerned and to guarantee their enforcement.

“Citizens should not be made to suffer” from Brexit, he declared, saying that the issue required “legal precision” rather than “political declarations”. There is a need to define who is covered and what rights they will have, and to make their rights directly enforceable on the basis of the withdrawal agreement.

Before the negotiations could progress to the next stage, “sufficient progress” would have to be made on the rights of citizens, including an agreement on essential principles. This would include equality, reciprocity, non-discrimination, a cut-off date of the UK’s formal withdrawal from the EU, a lifetime

duration of rights, the inclusion of family members, dependents and frontier workers, and the same level of protection and enforcement as exists under EU law today.

He concluded by saying that the EU had made a deliberate choice to put citizens' rights first, and repeated the need for "sufficient progress" to be made before other issues could be discussed.

What Do Citizens Want From Brexit?

ECAS' Director, **Assya Kavrakova**, followed Mr De Rynck with a [presentation](#) of the [findings](#) of ECAS' survey on what citizens want from Brexit. The aim of the survey was to gather the key concerns of citizens directly affected by Brexit, namely UK citizens living elsewhere in the EU and EU citizens in the UK.

Among the key findings that were presented at the conference, were the extent to which citizens feel personally affected by Brexit, the rights that they value the most, differences in the perceived awareness of rights before and after the referendum, their biggest concerns with Brexit and the increase in political activism that has occurred since the referendum.

On the first point, 86% of EU citizens and 96% of UK citizens surveyed felt personally affected by Brexit, and the rights they value most are free movement rights: the right to live and work in another Member State, the right to non-discrimination and the right to access the reciprocal healthcare system of another EU country. Consequently, these are the issues of biggest concern, although EU citizens are also concerned with xenophobia and discrimination whereas UK citizens do not want to lose their European citizenship and identity.

Finally, there has been a drop of between 10 and 15 percentage points in the perceived awareness of rights after the referendum among the EU and UK citizens surveyed and 58% of EU citizens and 77% of UK citizens have become more politically active since the vote.

Following on from this, **Dr Francesca Strumia** of the [University of Sheffield School of Law](#) launched the [Citizen Brexit Observatory](#), a project led by ECAS that also includes the [Law Centres Network](#). Dr Strumia said that the Observatory is based on the observation that Brexit is not only a loss of citizens' rights but also a loss of citizens' voice. The objective of the Observatory is to give citizens a voice, generate public interest in citizens' rights through evidence-based information and provide and provide free legal aid to EU citizens in the UK.

Towards a Citizens' Manifesto for Brexit

Dr Anthony Valcke, Supervising Solicitor at the [EU Rights Clinic](#), gave the final [presentation](#) before the roundtable discussion began, introducing a framework for a Citizens' Manifesto for Brexit that would provide the basis for the rights that EU citizens resident in the UK and UK citizens resident elsewhere in the EU should retain after Brexit.

Taking the European Commission's [Essential Principles on Citizens' Rights](#) as a reference point, Dr Valcke detailed the acquired rights that were either missing from the document or could be improved upon. Issues such as the acquired rights of family members of EU citizens working in the UK, and vice versa, carers (including non-EU carers of European children), and the rights of citizens of Norway, Switzerland, Iceland and Liechtenstein in the UK (and UK citizens residing in those countries), who are also exercising their right to free movement, are not addressed by the Commission's proposals and would be in the Manifesto.

Also absent from the 'Essential Principles' are specific instruments by which certain legal rights will be implemented, as well as rights that are missing altogether, from the Charter of Fundamental Rights and the harmonisation of drivers' licences to the right of recourse to the European institutions and access to public documents.

Furthermore, although the document calls would retain the European Court of Justice as the guarantor of citizens' rights, there is no such mention of the EFTA Surveillance Authority and the EFTA Court, and no recourse to the SOLVIT network as an alternative to the courts or Your Europe Advice.

In addition to the rights that should be protected, smooth and simple administrative processes are essential for citizens when exercising their rights. However, the UK government is actively discouraging European citizens from applying for residence documentation. Despite this, the number of EU/EEA citizens applying for residency has more than doubled since 2015, but rejection rates and expulsions of EU/EEA nationals from the UK has also increased significantly in recent years.

Finally, Dr Valcke outlined specific problems that need to be addressed. The requirement for EU citizens to have had comprehensive sickness insurance to qualify for permanent residence in the UK should be abandoned, the Commission should regularly review the UK's implementation of EU rules on residency and the Commission should address the restrictive access of UK citizens to public healthcare systems in Spain, Italy and France.

Brexit must not have a disproportionate impact on disabled people

Catherine Naughton, Director of the European Disability Forum, opened the discussion with an appeal for all EU-based rights for disabled people, such as passenger rights, work accessibility and accessibility in public procurement, and for rights that have been incorporated in to UK law not to be abolished without proper parliamentary scrutiny or to be watered down as 'red tape'.

She went on to express concern that a loss of EU funding would damage the disability sector and called more widely on disabled EU citizens in the UK and UK citizens in the rest of the EU, and their carers, not to be disproportionately impacted by Brexit. Many disabled people in the UK depend on personal assistants from the EU and their independent living must not be affected.

She concluded by saying that disabled people should continue to be part of the discussions so they are not further discriminated against.

Inconceivable that any agreement would exclude family members

Samia Badani of the New Europeans called for the rights of EU nationals in the UK to be protected for life and said that it was inconceivable that any agreement would exclude family members of EU nationals. The main concerns for EU nationals in the UK, she said, were the right to reside, equal treatment and access to healthcare, but she called on the government to go further than just protecting the rights EU citizens already have and to grant them the right to vote.

On a positive note, people had gained a strong sense of citizenship and a willingness to participate and take charge of their future.

“Arts need exchange”

Representing the cultural sector, **Katherine Heid** of Culture Action Europe put Brexit in the context of cultural rights and the necessity of citizens to have access to quality culture. Brexit, she said, is about what Europe we want to live in and how culture can contribute.

In this light, she had three demands for the Brexit negotiations. First, to maintain the Erasmus+ programme in the UK so that rich and poor alike can have a cultural experience in Europe. Second, the arts depend on mobility, which brings cultural diversity. This should not be restricted following Brexit. Finally, the Creative Europe programme, as the only programme for arts at EU level, should be preserved as a means of setting policy goals through culture and strengthening social cohesion.

She concluded with an appeal for culture to be a political antidote to populism as Brexit could happen anywhere.

UK quotas for academics would put many jobs at risk

Olivier Sparagano, Associate Pro-Vice-Chancellor at Coventry University, expressed two issues of particular concern for the higher education sector in the UK after Brexit.

First, with 5.5% of students in the UK coming from other EU countries, it is important that they will not be required to have study visas in order to attend UK universities after Brexit so that the UK government cannot restrict EU citizens' access to the UK's universities, which is the case with students from non-EU countries.

Secondly, 14-15% of staff at UK universities comes from the EU. If the UK was to include EU citizens in the quota that applies to workers from non-EU countries, many jobs at UK universities would be put at risk.

No national administration can deprive you of your EU citizenship rights

Ed Alvarado presented the legal case for UK citizens retaining EU citizenship after Brexit and introduced the European Citizens' Initiative '[EU Citizenship for Europeans](#)'.

As a non-EU citizen, he explained that he knows what it is like to lack the rights that UK citizens are going to lose when the UK leaves the EU, which is why he started the initiative.

Based on Article 20 TFEU, which is the legal basis of EU citizenship, and on two ECJ rulings that state that EU citizenship is the fundamental status of EU nationals and that national administrations cannot take EU citizenship rights away, he said that EU citizenship should be ensured regardless of nationality and that the goal of the initiative was to protect the rights of all EU citizens.

Cross-border volunteering enables young people to be active citizens

Piotr Sadowski of Volonteuropa was concerned about restrictions to free movement in terms of access to volunteering. Many young people voted to remain in the EU, but their voices are not being heard.

Citing a [study](#) by Volonteuropa this year, he said that young people are politically active across the EU and not apathetic to politics. He said, “There are tremendous levels of action among young people in the EU, much of which is facilitated by cross-border volunteering”.

Consequently, he called for UK CSOs to come together to maintain access to EU programmes such as Erasmus+, the European Solidarity Corps and EU Aid Volunteers, so that young people in the UK can continue to benefit from these programmes.

No horse-trading on environmental law

Cécile Toubeau, Director of Better Trade and Regulation at Transport & Environment, discussed how Brexit can be good for both citizens and the environment as citizens' rights encompass clean air and beaches as well as transportation.

She had three main concerns. First, the withdrawal agreement between the UK and EU should include an effective mechanism for enabling continued coordination on environmental matters and a robust and enforceable commitment to the retention of high standards. Secondly, if the UK is granted access to the single market, it should adhere to all existing EU environmental laws and remain within the jurisdiction of the European Court of Justice. Finally, there needs to be effective enforcement of the UK's current environmental commitments, resolution of existing infringement procedures against the UK and the UK should remain in all relevant environmental agencies to ensure a smooth transition.

The rights of citizens cannot be extinguished

Professor Volker Roeben, from the University of Swansea, discussed the legal status of the rights of citizens after Brexit and the prospect of Associate EU Citizenship for UK citizens.

Under international law, he said, the rights of citizens cannot be extinguished. First of all, Union citizenship, as the ECJ determined, is the fundamental status of EU nationals and all EU citizenship rights are fundamental rights and cannot be removed. Secondly, Article 70 of the Vienna Convention ensures that legal situations for citizens created by the Treaties must continue after withdrawal from those treaties.

He then moved on to how to ensure legal certainty for EU nationals in the UK and UK nationals in the EU. One option would be EU legislation to ensure the continuity of the rights of UK nationals in the EU after Brexit, although this would not be binding on the UK. A better method would be to use the so-called Withdrawal Treaty to guarantee citizens' rights. Associate EU Citizenship could be made available for UK nationals and Associate British Citizenship for EU nationals.

Great awakening of how citizens will be affected

Richard Corbett, MEP, was the first decision-maker to give his view on Brexit and citizens' rights. He began by saying that "Brexit is bad for you", a reference to the #BestBrexit4U hashtag, adding that he doesn't see any positives at all. As many as 7,000 issues may have to be settled at one point, but the number is likely to be more. He used the issue of pet passports to show that even a small thing can have big consequences for citizens – such as farmers whose land straddles the Irish border and disabled people with guide dogs.

He said that there is a "great awakening" taking place of how citizens will be affected by Brexit, including how issues around business and economics will also affect citizens.

Discussing the UK government's approach to the negotiations, he said that there was a "complete lack of clarity", with a divided, weak government and no position papers.

He concluded by saying that we should always keep the possibility of Britain changing its mind and staying in the EU. In the name of citizens and their rights, he reminded David Davis, Secretary of State for Exiting the EU, of something he said a few years ago: “If a democracy cannot change its mind, it ceases to be a democracy.”

We cannot hold citizens hostage to political games

Sophie in 't Veld, an MEP from the ALDE group, said that she was personally very sad about the Brexit vote and that the consequences will be far bigger than people ever imagined.

In her view, the British government is unprepared and “yet to grasp the dimensions of Brexit”. Anyone who thinks no deal is better than a bad deal, she said, is “severely misguided” as “no deal means chaos”.

For the 5 million people, plus their relatives, who will be affected by Brexit, certainty is needed as soon as possible. “We cannot hold citizens hostage to political games”, she said, adding that people are suffering from stress and despair.

She concluded with a rebuke to the European Commission and its unwillingness to start infringement procedures against the UK for refusing to grant EU citizens permanent residency if they cannot demonstrate that they have had comprehensive sickness insurance during their time in the UK. The Commission, she said, has an obligation to those citizens affected.

“Citizens should not be punished – their situation should be safe.”

People have the right to maintain their citizenship

Jill Evans, MEP, found the referendum result disappointing and distressing, and many of her constituents feel it is unfair that their citizenship is being taken away from them against their will. She talked about the issue being about identity as well as rights, with many people in Wales seeing themselves as Welsh Europeans, particularly young people, many of whom did not get to vote.

She called for sections of society and all governments in the UK to be involved in the negotiations, but lamented that the Welsh voice is not being heard in Westminster.

On citizenship, she said that people have the right to maintain their citizenship, which is why she commissioned research from the University of Swansea (see **Volker Roeben**, above) to find the legal path to making it a reality.

She concluded by saying that we need to involve citizens in the debate and that, if we involve all sections of society, it would strengthen the UK's hand.

Transparency brings expertise into decision-making

Rosita Hickey, Head of Strategic Inquiries for the European Ombudsman, commended the Commission and Council for being much more transparent than usual in setting out the EU's position on Brexit, and said that the benefits of that transparency were apparent – including, allowing citizens to critique what it is doing and allowing expertise into the process. The European Ombudsman, she said, has proactively pushed for transparency from the outset, particularly regarding access to official documents.

On the role of ombudsmen across Europe, she said that they need to be aware that people will come to them and they need to be ready to ensure that people's rights are being upheld, to deal with unjust treatment and address "administrative hassle".

For citizens, concepts such as reciprocity, comprehensiveness and enforceability, when talking about rights, are too abstract to have any meaning. They want to know concretely how they will be affected. Also, there should be particular concern for vulnerable people, who risk having their vulnerability aggravated by Brexit.

Finally, timing is an issue as people's concerns will change according to how the negotiations progress and to what extent the EU and UK diverge after Brexit actually happens.

Brexit will damage every single person who is affected by it

The Scottish Government Minister for UK Negotiations on Scotland's Place in Europe, **Michael Russell**, started out by saying that the position of EU citizens in Scotland was at the heart of the Scottish Government's concerns and that he had pressed the UK government at every opportunity to issue a unilateral offer to EU citizens to guarantee their rights.

He continued to say that there needs to be a change of attitude to migration in the UK and that the law as currently enforced is making people feel unwelcome. Furthermore, there is a need to recognise the UK's dependence on EU migrants in many sectors, including the health service, finance, tourism and agriculture. For Scotland the issue is even more acute, particularly in rural areas, as the population of Scotland will likely decline without the free movement of persons from Europe.

The UK negotiating team, he said, is living in an "unreal world" with little or no understanding of how difficult or complex Brexit is. Legislation resulting from the Great Repeal Bill will be the largest undertaking in the Scottish Parliament's history, but the Scottish Government is yet to even see it.

His final point was that peace and prosperity in Europe is the consequence of cooperation between previously warring nations, which is put at risk when one of them walks away. Brexit, he said, is not no risk or no cost, but "immensely risky and immensely costly" and it "will damage every single person who is affected by it."

Gibraltarians are probably the most European people anywhere in the EU

Sir Graham Watson, the EU Counsel for HM Government of Gibraltar, pointed out that although Gibraltar is "about as far away from Brussels as you can get", Gibraltarians are "probably the most European people anywhere in the EU". Despite the fact that 96% in Gibraltar voted to remain in the EU, it has been told by the UK that it has to leave.

The UK, he said, is in a "very strange psychological state", with levels of mistrust towards Europe not seen since the Napoleonic Wars, and a level of Micawberism (unjustified optimism) not seen since Charles Dickens. The people of Gibraltar, however, are very concerned because they know what it is like to have to fight for their rights.

Their right to self-determination is blocked by Spain every year at the UN, they had to fight for the right to vote in European elections, which was finally granted by the ECJ 10 years ago, and even had to go to the European Court of Arbitration in Sport for their football team to be able to participate in UEFA tournaments.

However, they still don't enjoy the same rights as other EU citizens when using their airport, because Spain won't allow EU transport legislation to apply to Gibraltar. The same is often true with the right to move freely across the border with Spain, which is the single most important right for Gibraltarians and for the 12,000 workers who cross the border from Spain every day.

He finished with an appeal for help with keeping the border open as 12,000 EU citizens rely on it for their livelihoods as well as the 32,000 people on the Rock.

Q&A

Luca Jahier, President of Group III at the European Economic and Social Committee, began the Q&A by saying that a bad deal is better than no deal on Brexit as the people who are most at risk are the most vulnerable in society. Furthermore, as there is very little time to conclude a deal, transitional arrangements need to be looked at urgently.

Afterwards, the following questions were asked:

According to Financial Times there are over 700 international accords that will have to be renegotiated. I do not think the UK has the capacity to do so. What is your opinion?

Richard Corbett: There are actually over 7,000 agreements, which is a subsection of probably 50,000 that will have to be renegotiated.

Guy Verhofstadt has been supportive, even of the Parliamentary resolution relying on possible rights of the UK citizens in the UK who don't want to be stripped of their EU citizenship. Could you say a few words about that?

Sophie in't Veld: Yes, there are suggestions to create the possibility for the UK citizens to keep their EU citizenship. We are looking into it. However, nobody knows how it will work yet, but if there is the possibility, it will be done.

Question to Eduardo Alvarado: As you are Mexican you can't sign or be legally involved with the ECIs because you do not have the EU citizenship. Is there anyone who helps you?

Eduardo Alvarado: I have help from my friends. I invest all my time in the ECI and my friends signed it.

Question to the audience: There are currently 3 ECIs about Brexit. Can someone in the audience say more on the others?

Answer from Tony Simpson, organiser of the ['Retaining European Citizenship'](#) ECI: ECIs are a mystery. Nobody knows why we have them. When we found that our rights will be taken away we created one. It is necessary to be informed. The current 3 ECIs are an attempt to bring the EU closer to the people and act upon EU citizenship. ECIs are a means of enacting our European citizenship.

Question to Piotr Sadowski: You were referring to zero hour contracts. In Polish they are called rubbish contracts. How are they useful?

Piotr Sadowski: We are part of Solidar. Solidar is working on decent working conditions. They have been pressing the EC to improve conditions. European civil society is doing a lot to work on the improvement of working conditions. There are many people who are still being exploited at work. The EU does a lot to stop it. We think that after the Brexit the right of workers for decent work may be exploited.

Question: What can we do to encourage citizens to get mobilised? What should they ask the UK government? How should we pressure the UK government to reply?

Sophie in't Veld: They can do the following:

1. Write to their MEPs - The more stories we hear the more we can pressure the EU and the UK. There is a very little known about the Brexit negotiations in other Member States.
2. Approach their national governments.
3. Ensure visibility of their stories in national media.

People should be aware of the situation and make their governments feel that they will vote in the next elections. Also, the European Parliament organised a public hearing on the issue of Brexit in May and will organise another one in September.

Richard Corbett commenting on Sophie in't Veld: What could the European Parliament do? Before voting on any deal to the ECJ to verify if the agreement is compatible with the Treaty, including the Charter of Fundamental Rights.

Samia Badani: They should mobilise by organising events or by contacting their MEPs and MPs.

Michael Russell: We need to make sure that the EU27 is aware of the situation in the UK. A lack of information about Brexit has consequences. Citizens need to push for being told what will happen or what is happening at the moment. Also, the question of what will happen to the Scottish people is an issue that the EU must address.

Assya Kavrakova: She made the audience aware of the [EU Rights Clinic](#) and its activities, and encouraged the audience to get in touch with the EURC if they are having difficulties and also mentioned that the EURC is looking for volunteers.

Q: There is a disabled British citizen living in France and, also, a British lady who moved to Spain because her son was sick. What will happen to them after the Brexit? Do you have any specific advice?

Catherine Naughton: Disabled people fear that the Brexit process will strip them of their rights. The exit deal must contain provisions stating that the rights of the disabled are recognised and they don't have to leave the countries they live in.

Q: There is no transparency in terms of presenting all the documents during the negotiations. That is very worrying. How is transparency on UK side working out so far?

Anthony Valcke: The EURC has evidence of systematic issues in the EU. Transparency is a good example of where the EU has done well on Brexit, but UK government has not been transparent. Parliament has been trying to get the government to be more transparent. Recent election result may give added impetus to that.

Questions: I was surprised by the EC press release on ECIs on issue concerning EU citizenship which is touching primary EU law. But the EC does not accept ECIs as primary law. Has anyone from the Commission contacted Mr Alvarado to ask him how to proceed?

Eduardo Alvarado: The positive thing about the ECIs is that they are based on primary law. ECIs are meant to be something that implements the Treaty. My ECI is based entirely on primary law and even though the Commission isn't required to act on ECIs, it is required to act to protect citizens' rights.

Assya Kavrakova: She explained about ECAS' [ECI Support Centre](#). Under our pressure, the Commission changed the system of registration for ECIs. They softened the approach and now accept ECIs that they

would not have accepted in the past. The problem is a lack of consistency in approach. We raised a question at the REFIT platform. They are looking into revising the process of registration.

Question: I have moved 6 times to different EU Member States. Each time it was difficult to access my rights. So, are we talking about Freedom of Movement of people or just Freedom of Movement of workers? Is Freedom of Movement a myth?

Anthony Valcke: Free movement is not guaranteed absolutely. There are conditions for it. Citizens have to be a worker or to prove that they have sufficient resources and comprehensive sickness insurance. But there is an issue because national administrations often misapply the rules and create an implementation gap between how the rules work in theory versus how they operate in practice.