

Today's world moves beyond borders

Position paper on the rights of UK and EU nationals: Ambiguity, gaps and recommendations

Introduction



After the July 2017 Brexit negotiation session, a **'Joint Technical Note on Citizens' Rights'** was published by the EU and UK. It maps where agreements already exist and where further concessions by the EU and the UK are still needed.



In this position paper, Fragomen highlights ambiguous and missing pieces of the Technical Note on citizens' rights and proposes some policy options for future talks.

Analysis and comments on the EU/UK Joint Technical Note

Mobility rights for UK nationals with permanent residence permits in one EU country	
<p>EU/UK Joint Technical Note: UK nationals in scope of Withdrawal Agreement only have protected rights in the state(s) in which they have residence rights on exit day.</p>	<p>Fragomen comments: This could lead to a situation where third country nationals with long term residency permits in one EU Member State have more intra-EU mobility rights than (former) EU citizens.</p>
	<p>Fragomen recommends:</p> <ul style="list-style-type: none"> ✓ Schengen short term mobility: UK nationals with permanent residence permits should not be subject to the 90 days in any 180 days Schengen limitation. ✓ This should also apply to their family members. ✓ Holders of permanent residence permits in one EU country should also be able to settle in another EU country without restrictions and build permanent residency rights in this second Member State, according to pre-Brexit rules. ✓ Short term work related mobility: UK nationals with permanent residence permits should not require work permits or other authorisations to work in a second Member State.

	<ul style="list-style-type: none"> ✓ When moving to a different Member State for work related purposes, UK nationals with permanent residence permits should not be subject to quotas some Member States may have in place for third country nationals. ✓ In cases of intra-EU mobility (short and long term) post-Brexit, their social security rights should be protected under EU law. ✓ Special attention should be paid to UK nationals with permanent residence permits who are cross-border workers.
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Calculating the years for permanent residence

<p>EU/UK Joint Technical Note The EU and the UK agree to grant permanent residence to EU/UK nationals as per Article 16 of the Citizens’ Directive 2004/34 after 5 years of legal residence in one Member State.</p>	<p>Fragomen comments A UK citizen who has been living for even 10 years in the EU may not be entitled to apply for permanent residence if he has not lived for five years in a single EU country. This is not the case for EU nationals, who will be able to apply for settled status in the UK after 5 years.</p>
	<p>Fragomen recommends:</p> <ul style="list-style-type: none"> ✓ Ensure full reciprocity between the EU and the UK and allow cumulation of periods of stay. ✓ Ensure that all years spent in one EU country are taken into consideration although there are no compulsory registration requirements in some EU countries. ✓ Avoid a less favourable treatment than EU Blue Card Holders. ✓ The EU Blue Card allows permanent residence for third country nationals if they have been living legally for five years in the territory of the EU as a whole, and two years immediately prior to the submission of the long term residency application in the EU country where the application is lodged.

Posted workers in the future relationship between the EU and UK

<p>EU/UK Joint Technical Note EU national posted workers are not covered by the citizens’ rights chapter of the withdrawal agreement.</p>	<p>Fragomen comments Fragomen agrees that posted workers are mostly associated with cross-border service provision, but notes that businesses on both sides of the Channel are strongly interlinked, and multiple cross-channel business trips and intra-company assignments take place every day.</p>
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	<p>Fragomen recommends:</p> <ul style="list-style-type: none"> ✔ Service delivery by posted workers between the UK and EU should be dealt with simultaneously to citizens' rights. ✔ The withdrawal agreement should specify what happens to workers (UK and non-UK nationals) who are posted in the EU from the UK and vice versa, on Brexit day. ✔ In future arrangements, there should be clear work permit exemptions for business travellers. ✔ Future ICTs should not confront work permit limitations or other prior work authorisations, volume limitations or labour market tests. ✔ EU and UK transferees should maintain current intra-EU mobility, family reunification rights and home social security coverage.
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EU citizens returning from the UK to their origin country or another EU country	
<p>EU/UK Joint Technical Note This is not addressed in the technical note.</p>	<p>Fragomen comments If this issue is not addressed, it may result in national administrations considering these individuals as EU citizens returning from a third country.</p>
	<p>Fragomen recommends:</p> <ul style="list-style-type: none"> ✔ The EU should adopt specific provisions to be included in the withdrawal agreement. ✔ These citizens should continue falling under the EU's social security coordination rules and their acquired rights (example: old age pension rights) should not be hampered. ✔ EU citizens returning to their home country or another EU country from the UK post-Brexit will have exercised their EU free movement rights. The rights activated by this mobility should be maintained upon their return. In particular, their right to family reunification should be subject to EU law, as in many circumstances it is more favourable than national family reunification law.

Conclusion

Fragomen has on-the-ground knowledge of the implementation of EU Immigration and Free Movement Directives in all EU countries and in the UK. Our awareness of the immigration challenges individuals and businesses face now and will face in the future, enables us to bring evidence and propose solutions to decision makers.

We strongly encourage EU and UK negotiators to:

- ✓ Reach out to as many citizens' associations, practitioners and other stakeholders as possible to find out more about the diverse situations of individuals and businesses on the ground
- ✓ Ensure that the consequences of losing EU citizenship for UK nationals are as limited as possible
- ✓ Formalise the agreement on citizens' rights as soon as consensus is found and not wait until all the elements of the withdrawal agreement are agreed upon
- ✓ Increase the number of technical talks to achieve significant progress before the October summit and start talks about what the future will look like, because citizens and businesses need certainty urgently

About Fragomen

Fragomen is the world's leading immigration services firm with an unparalleled depth of expertise in the migration laws, policies, and practices of most of the world's countries. Fragomen has special experience-based knowledge which enables it to provide advisory services on migration issues to national governments and regional intergovernmental organisations. Fragomen is also part of the European Commission's Expert Group on Economic Migration.

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