

How can UK citizens in the EU maintain their rights?

PURPOSE OF BRIEFING

The UK's vote on 23 June, 2016, to leave the European Union (commonly known as "Brexit") has created significant uncertainty on both sides of the English Channel. Although the actual withdrawal procedure has not yet been launched, employers and individuals are trying to understand how this vote will impact the freedom to move, establish and/or work in the EU.



Many questions remain unanswered as to the future movement rights between the UK and the EU. Politicians on both sides have made statements reassuring citizens that they are aiming for a 'generous settlement' that will preserve the existing freedom of movement rights. However, the road to reaching a final deal is still long and many unforeseen issues may arise as decision makers start discussing technicalities. Despite this uncertainty, UK citizens working, studying or simply living in the EU can take measures to safeguard their rights after Brexit.

With this briefing, Fragomen provides advice to UK citizens currently living in another member state of the EU. This briefing can also be useful to employers of UK citizens in the EU.

REGISTER YOUR RESIDENCE

UK citizens who have been living in another EU member state for more than three months, and who do not have a residence document, are advised to contact national authorities to confirm local registration requirements. Some EU countries, such as France and the Netherlands, do not impose any legal or practical obligations on EU nationals to register their residence. As such, the right to free movement is not always dependent on a residence document.

Nevertheless, when the UK leaves the EU, such a document might prove very useful to demonstrate one's residence prior to the cut-off date chosen by political leaders. National authorities might accept other documentation, such as payslips or lease contracts, but an address registration may become the safest document to avoid grey areas and save both time and money.

APPLY FOR PERMANENT RESIDENCE

UK nationals who have been legally residing in another EU member state for more than five years can apply for EU permanent residence. Several member states allow certain categories of EU mobile citizens to apply for this status even before the five-year deadline. For example, in Belgium, EU workers can acquire permanent residence after only three years.

It is important to have a permanent residence document for two main reasons:

- Firstly, to confirm that you fulfil the permanent residence requirements, which is very useful in cases of long absences from the country of residence.
- Secondly, to maintain as many rights as possible after Brexit. It is not yet clear what will happen to British EU permanent residence holders after the UK formally withdraws from the EU. Their status could automatically be transformed into EU long-term residence or national long-term residence, statuses for which only non-EU nationals are currently eligible.

Although the rights attached to these two statuses are not as broad as those of EU permanent residence, they do guarantee the right to continue residing in the host member state.



APPLY FOR NATIONALITY, BUT ONLY IF IT IS THE RIGHT OPTION FOR YOU

At first sight, applying for nationality in the host member state may seem the best solution to minimise the uncertainty created by Brexit. Indeed, acquiring the nationality of an EU member state allows individuals to maintain their EU citizenship and the associated rights such as freedom of movement, establishment, etc. In addition, the criteria to fulfil for nationality are not always more demanding than those for permanent or long term residence applications. Moreover, nationality is the most secure option to guarantee residence rights in the long term. Unlike the right to permanent residence, which can be lost after two years of consecutive absence from the host country, nationality is only lost in very exceptional circumstances.

There are three main considerations to take into account before applying for nationality:

- Is dual citizenship allowed in the host country?
- What implications would acquiring a new citizenship have on the tax regime you would be subject to?
- Would this lead to losing any rights? For instance, in some member states, national immigration laws grant less generous family reunification rights than the ones granted by the EU free movement legislation.

SO, WHAT IS THE RIGHT THING TO DO?

Naturally, solutions will differ from case to case. Many elements of each individual's personal situation must be taken into consideration before making a decision, including duration of residence in the host country, employment situation, nationality of family members, future plans etc. However, in this context of uncertainty, it is important to take action in order to safeguard the rights acquired so far and/or to keep building upon these rights. The withdrawal process will be a long and bumpy ride and minimising its negative consequences should be a top priority for UK citizens residing in an EU member state.

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