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Maintaining EU-27 citizens' rights in the UK: a Central and Eastern European Perspective

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The United Kingdom's (UK) decision to leave the European Union (EU) has unexpectedly created a situation of uncertainty and insecurity for almost 3.5 million EU27 nationals currently residing in the UK. This is especially the case for Central and Eastern Europeans who took advantage of the EU's freedom of movement to immigrate to the UK in large numbers after their countries joined the community in 2004 and 2007. The numbers are significant: over 900,000 Poles, 310,000 Romanians, 185,000 Lithuanians, and 93,000 Slovaks are threatened with the loss of rights to freely live and work in the UK.¹ Despite political pressure, the British

¹ *Annual Population Survey (APS)*, Office of National Statistics. According to some estimations, the numbers may be significantly higher, over 1 mln of Poles, 250,000 Lithuanians etc.

government had repeatedly refused to guarantee migrants' rights and made it a subject of political negotiations with Brussels. Uncertainty continued, with citizens' rights being used as leverage in the negotiations between the UK and the European Commission. On December 8, December 2017, an agreement was finally reached between the negotiators of the European Union and the United Kingdom Government, just before the December 2017 European Council Summit.²

² *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union*, 8.12. 2017, TF50 (2017) 19 – Commission to EU 27, art 8.

The issue of EU citizens' rights is a politically sensitive one for many countries in Central and Eastern Europe (CEE) (especially Poland, Lithuania, Latvia, and Slovakia) due to the large number of their nationals living in the UK. For countries with small populations (e.g. Lithuania, Latvia, and Slovakia) the share of their nationals residing in the UK as a percentage of their total population is up to 6.29% (Lithuania) and 4.60% (Latvia), making the issue of maintaining the rights' of EU27 migrants living in the UK absolutely crucial. Moreover, most of the migrants are still voters in their countries of origin; as a result, protecting their rights has become one of the main concerns on the political agenda for the region. The Brussels' negotiators have recognised the importance of this issue.

Although some governments (e.g. Poland) have announced their willingness to attract migrants to return by preparing special programmes supporting homecoming, those programmes are neither sufficient nor attractive enough to drive return migration. It seems that neither the state (as well as its labour market) is ready for mass returns, nor is the majority willing to return. Nonetheless, governments and politicians keen to show that they look after their citizens have been putting pressure on the EC negotiators. Any concessions would negatively be received by the public.

This policy paper provides a general overview of the Central and Eastern European regional perspective on the ongoing Brexit negotiations. It focuses on the free movement of people and the rights of EU27 citizens living in the UK. It argues that those EU27 nationals acquired (or will acquire) their rights on the basis of the EU's freedom of movement (without time limit), and, therefore, their rights should be

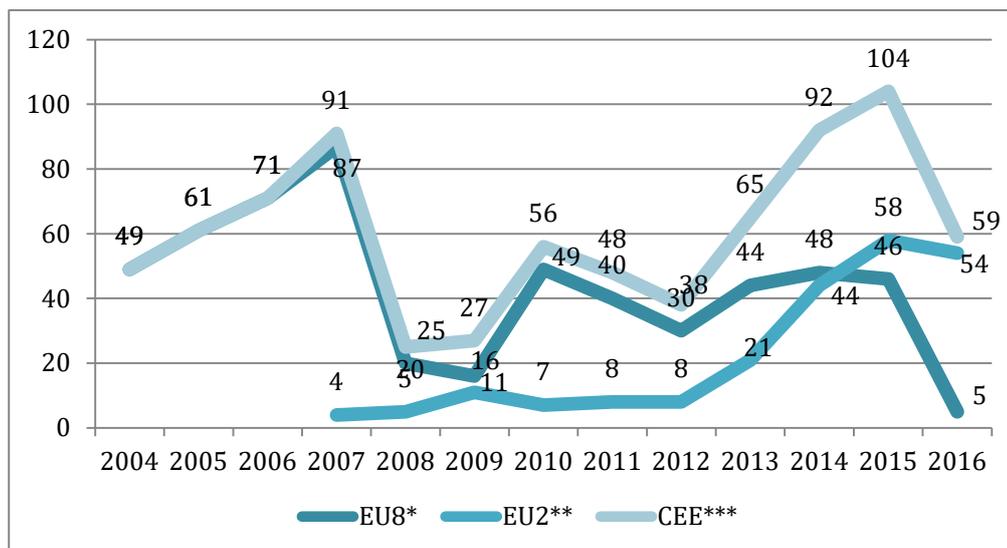
maintained despite the UK's withdrawal from the Union. To enrich the ongoing debates with facts and opinions from the region, this paper seeks to sum up the arguments and the state of play in order to better highlight the outlook of CEE on the matter.

CEE nationals in the UK – who is affected by Brexit?

The UK, Ireland and Sweden were the only "old" EU member states that decided to open their labour markets to workers from the eight Central and Eastern European states that joined the EU in 2004. The British government had estimated the possible number of immigration from the region to be between 5,000 and 13,000 annually, however the numbers were far beyond that. A massive migration flow from CEE, especially Poland, resulted in one of the biggest migration waves in the history of the country. It started with 53,000 immigrants from the region coming in 2004, increasing to 76,000 in 2005, 92,000 in 2006 and reaching peaks of 117,000 in 2007, 129,000 in 2014 and 138,000 in 2015 (due in part to rapid increase of immigration from Bulgaria and Romania.³) Since 2004, net migration from the region (difference between those coming and leaving) has always been above zero, reaching 91,000 in 2007 and 104,000 in 2015.

³ Those numbers only include migrants according to the United Nations definition, i.e. moving to the UK for at least 12 months, and excluding large numbers of seasonal workers. See. *Net Migration Statistics*, Migration Watch UK, <https://www.migrationwatchuk.org/statistics-net-migration-statistics/#create-graph>.

Graph 1. Net migration from CEE to the UK 2004-2016 (in thousands)



As of now, migration from CEE reached 1.8 million. Half of this number is constituted of immigrants from Poland, making them the largest foreign-born minority in the UK (even before Pakistani and Indian nationals). Poland, India and Pakistan account for 9.5%, 9.0% and 5.9% respectively of the UK's foreign-born population

(followed by Ireland with 4.5% and Germany with 3.3%). Polish and Indian nationalities are also the main foreign nationalities in the UK, with Poles being the largest group (15.7%) of foreign citizens.⁵

* Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia
 **Bulgaria, Romania
 *** Sum of lines 2 and 3

Source: *Net Migration Statistics*, Migration Watch UK,
<https://www.migrationwatchuk.org/statistics-net-migration-statistics/#create-graph>.

The 2004 migration wave from Poland, the country with the highest number of migrants in the UK, had the effect of opening the UK labour market for most of the CEE region. In 2002, Polish data showed 24,000 Polish migrants living in the UK compared to 294,000 in Germany, i.e. the main destination for Polish emigrants at the time. In 2004, the number of Poles in the UK increased to 150,000, doubled in 2005 (340,000) and reached 580,000 in 2006, for the first time overtaking the number of Polish migrants in Germany (450,000).⁴

Table 2. Overseas-born population in the United Kingdom (60 most common countries of birth, 2016)

Country	Rounded up estimates
Poland	911,000
Republic of Ireland	389,000
Romania	310,000
Germany	300,000
Italy	201,000
Lithuania	185,000
France	158,000
Spain	153,000
Portugal	131,000
Slovakia	93,000
Latvia	92,000
Hungary	91,000

⁴ M. Okólski, J. Salt, *Polish Emigration to the UK after 2004, Why Did So Many Come?*, Central and Eastern European Migration Review, Vol. 3, No. 2, December 2014, pp. 11–37.

⁵ *Migration in the UK Statistics*, The Migration Observatory, 21.02.2017, <http://www.migrationobservatory.ox.ac.uk/resources/briefings/migrants-in-the-uk-an-overview/>.

Bulgaria	85,000
Netherlands	69,000
Greece	63,000
Cyprus	62,000
Czech Republic	54,000
Belgium	36,000
Sweden	35,000
Malta	30,000
Total	8,137,000
Total non-EU	4,689,000
Total EU⁶	3,448,000
Total EU8 (Central and Eastern Europe)	1,821,000

Source: Annual Population Survey (APS), Office of National Statistics⁷

These figures indicate that the issue of EU citizens' rights in the UK has a different meaning among CEE countries. Although they all support the European Commission in the Brexit negotiations, the significance of the issue in public debates differs between, for instance, the Czech Republic and Lithuania due to their different share of nationals residing in the UK as a percentage of their total population. To compare, in Lithuania the issue of EU citizens' rights is a significant political factor leading not only to a debate about a change in the constitution (to allow dual citizenship), but also to a debate in the parliament (Seimas) in April 2017 with the participation of the representatives of the Lithuanian community in the UK presenting their concerns and the results of a survey of Lithuanians in the UK.⁸ On the other

⁶ Only 20 top EU countries are represented here.

⁷ Published on 24 August 2017 by the Office for National Statistics.

⁸ Ramūnas Vilpišauskas, *Lithuania and Brexit: security, money and citizens*, In: *Negotiating Brexit: What do the UK's negotiating partners want?*, 2017, University of East Anglia.

hand, migrants from Estonia are so few that they are not even mentioned in UK statistics (immigration to the UK is low because the country is small, but also because emigration from Estonia is low as Estonian workers would rather go to Finland for the workweek and head back home for the weekend).

High emigration has a multidimensional impact on the home country and represents a significant economic factor for countries such as Poland or Lithuania, both positive (lowering unemployment, financial remittances, etc.) and negative (brain drain etc.). In case of Lithuania, one can consider the post-2004 wave of emigration as a demographic crisis with significant political consequences, but also as a positive factor that helped absorb the European economic crisis in the country. As such, Brexit raises the important question of the extent to which the emigration trend might be reversed, and what would be the possible resulting economic effects.

Table 3. The share of migrants residing in the UK as a percentage of their home country population (2017)

CEE countries	Estimated number of emigrants in the UK	Population (in mln)	Share of migrants
Poland	911,000	38.0	2.40%
Romania	310,000	19.9	1.55%
Lithuania	185,000	2.9	6.29%
Slovakia	93,000	5.4	1.72%
Latvia	92,000	2.0	4.60%
Hungary	91,000	9.9	0.92%
Bulgaria	85,000	7.2	1.17%
Czech Republic	54,000	10.5	0.51%

Source: Own calculation on the basis of the Office of National Statistics and Eurostat

Citizens' rights in Brexit negotiations – continuing uncertainty

The European Union position

The negotiating position of the European Union was presented by the European Commission on June 2017 and was in line with the expectations of the CEE region. Brussels demanded that the rights of EU citizens living in the UK, UK citizens living in the EU as well as their family members be fully guaranteed on the basis of EU law, i.e. the free movement of people. The only limitation was to be the cut-off date of arrival – before or after the entry into force of the Withdrawal Agreement, i.e. the date of Brexit as such.

According to the EU position, EU nationals would not be obliged to confirm their residency in the UK with documents, and the five-year residency would automatically guarantee them the right to permanent residency. Those guarantees would cover not only EU and UK citizens, but also their family members, even if they are non-EU nationals (or third-country nationals). Guarantees would also cover persons being in the process of obtaining their rights (e.g. to pension) and even those working in the UK while living in another EU member state (and vice versa). As mentioned, the EU position ensures that all citizens' rights are maintained in the same manner as they currently are – including right to free access to education, full access to the labour market and, most importantly, the right to family reunification. On the other hand, the EU position did not cover voting rights in local or European Parliament elections.

Those regulations resulting from EU laws would be guaranteed by the jurisdiction of the Court of Justice of the European Union and the European Commission would be entitled to monitor the situation, both in the member states and in the United Kingdom.

The UK position

Despite political pressure, the United Kingdom repeatedly denied to unilaterally guarantee the rights of EU citizens living in the UK.⁹ Instead it proposed an entirely new system created only for the EU27 nationals and based on the British immigration law, but creating completely new legal categories for migrants from the EU.

The UK's proposal intends to create three groups of migrants, each with a different status. In the best situation would be those able to confirm having lived in the UK for a continued five-year period before the cut-off date (including two years of grace period). Those migrants will receive a so-called "settled status", similar to the one obtained by non-EU nationals living in the UK for five years but without the necessity of having to prove continuity of medical insurance. The last exclusion is not insignificant. This status will guarantee a right to reside and, as such, a right to apply for British citizenship (after six years

⁹ Such guarantees were demanded by the Labour Party and Liberal Democrats and many NGOs, and the House of Lords proposed an appropriate amendment in the Withdrawal Bill, which was rejected by the ruling Conservative Party. See. *MPs reject Lords amendment to guarantee rights of EU nationals before Brexit negotiations begin*, Independent, 13.03.2017, <http://www.independent.co.uk/news/uk/politics/mps-reject-lords-amendment-to-guarantee-rights-of-eu-nationals-before-brexit-negotiations-begin-a7628116.html>.

altogether), and access to all social benefits and services.¹⁰

Migrants with settled status would be in a relatively comfortable situation however, one has to take into account the lack of automatism, i.e. the necessity to apply for the status and proving inhabitancy, and the possibility that the status would be denied to people who committed a crime in the UK. Moreover, in case of leaving the UK for more than two years the status would be lost unless a person “has strong ties in the UK”¹¹, which is discretionary and creates additional uncertainty. On top of that, applications for the settled status would be submitted individually (not by the family as a whole). Therefore, the outcome of the procedure might differ for each family member.

Migrants unable to prove five-year inhabitancy in the UK would find themselves in a less comfortable situation. They would be entitled to apply for a temporary status to fulfil the five-year period and afterwards to apply for a settled status, however without any guarantee of receiving it. Moreover, granting this status will depend on the British law in force at the time.

The UK wanted to guarantee existing rights of citizens (both, from the UK and the EU) to vote and stand in local elections.

Agreement

On December 8, 2017, prior to the December European Council summit, the

¹⁰ *The United Kingdom's Exit from the European Union Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU*. Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, June 2017.

¹¹ Ibid.

European Commission and the UK Government finally reached an agreement on the three negotiating issues, including citizens' rights. Although this is an initial document and not the detailed Withdrawal Agreement, it sets commonly agreed commitments and principles and clarifies some of the issue raised above.

Concerning citizens' rights, both parties have reached a common understanding when it comes to family reunification. All family members of EU citizens residing in the UK (and vice versa) will be entitled to reunite even after Brexit “for the life time of the right holder”, provided that they become related to the EU citizens before the Brexit date. However, despite having been previously demanded by the Commission, the agreement does not provide any guarantees for so-called future family members¹² except for children, who will be entitled to join their parent (i.e. EU citizen in the UK or vice versa) regardless of where and when they are born (or adopted).¹³

The agreement does not guarantee any voting rights in local nor European Parliamentary (in case of UK nationals in the EU) elections.

Despite demands by the European Parliament, obtaining a settled status in the UK will not be automatic, but the administrative procedures for applying are to be “transparent, smooth and streamlined”. It remains to be seen how that will translate into practice. Importantly, applications made by families will be

¹² Ibid., *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations...*, art. 14.

¹³ Ibid., art. 12.

considered jointly.¹⁴ Furthermore, individuals who are already holding a permanent status will have to apply again and be a subject to verification of identity, criminality check and confirmation of ongoing residency (the procedure will be free of charge and the direct wording describes it as “document conversion into the new document”). As stipulated by the Agreement, the right of residency can only be lost after leaving the UK for five continuous years or more.¹⁵

The Commission and the UK government have agreed that the Withdrawal Agreement should enable citizens to directly rely on their rights from the Agreement and any inconsistent rules should cease to apply. The UK government will legislate a bill that makes express reference to the Agreement and “fully incorporate[s] the citizens’ rights Part into UK law”.¹⁶

However, monitoring of maintaining of citizens’ rights in the UK will not be provided by the EC, as previously demanded, but by an independent UK authority whose role will be discussed in a later stage of the negotiations. The role of the EU Court of Justice will be similarly limited. UK courts can ask the ECJ for interpretation, and this mechanism will exist for eight years after Brexit.¹⁷

It is difficult to estimate how many would be affected by the five-year residency criteria because it still depends on how the transition period will be calculated. However, migrants from Bulgaria and Romania will be among those particularly

affected due to the rapid increase of emigration to the UK from these countries since 2012.¹⁸

In a worse situation would be those arriving in the UK after the cut-off date. They would be allowed to stay in the UK “at least for a temporary stay”¹⁹ and might be entitled to settle, but they cannot expect any guarantee of receiving a settled status. Little is known about the details of the future situation of “latecomers” but it seems that for those migrants, citizens’ rights’ including political rights (voting and right to candidacy in local elections), the right to free access to education, full access to the labour market and, most importantly, the right to family reunification will not be continued.

The cut-off date

Throughout the negotiations, the UK had been insistent that the cut-off date would not necessarily be the date of the UK withdrawal from the European Union. The British position was that the cut-off date had yet to be set and could be any date between March 29, 2017, i.e. the date when Article 50 was triggered, and March 29, 2019, i.e. the probable date of the UK’s withdrawal from the EU.²⁰

The issue had become one of the main points of contention in the negotiations and a major concern for EU27 citizens living in the UK. Indeed, those who find themselves

¹⁸ *Net Migration Statistics*, Migration Watch UK, <https://www.migrationwatchuk.org/statistics-net-migration-statistics/#create-graph>.

¹⁹ *Ibid.* *Net Migration Statistics*, Migration Watch UK.

²⁰ *The United Kingdom’s Exit from the European Union. Safeguarding the Position of EU Citizens Living in the UK and UK Nationals Living in the EU*, Presented to Parliament by the Secretary of State for the Home Department by Command of Her Majesty, June 2017.

¹⁴ *Ibid.*, art. 17.

¹⁵ *Ibid.*, art. 23-25.

¹⁶ *Ibid.*, art. 34-35.

¹⁷ *Ibid.*, art. 38-40.

on the wrong side of the cut-off date remain in an uncertain situation: "Those EU citizens and their family members who arrive in between the specified date and the date the UK leaves the EU will continue to exercise free movement rights up until the point the UK leaves the EU. From then on, the grace period of blanket permission will apply to them, while they make an application to the Home Office for permission to stay ('leave to remain'), in accordance with the new rules applying to EU citizens, which are yet to be determined" [emphasis added].²¹ Therefore, notwithstanding the unclear "grace period", the decision regarding the cut-off date would have a major impact on migrants' eligibility to access benefits, pensions, healthcare, higher education etc.²²

In response, the European Parliament assessed the UK settled status proposal as "nothing less than relegation to second-class status". It also underlined that "Above all, the UK proposal means that EU citizens would have no guarantee that the UK Parliament would not make changes to UK immigration law in the future, meaning no life-long protection".²³

From a personal point of view, this situation would create two essential problems. Firstly, according to the New Europeans and Britain in Europe report, the cut-off

date dispute already restricts EU27 citizens travelling outside the UK as it may interrupt their continuous residence in the UK and affect their legal situation after Brexit.

The EU position was clear; the "cut-off" date is the date of withdrawal. This was confirmed by the European Parliament which warned that it intends to reject any other solution.²⁴ So, why is the UK position different? One explanation is that it is afraid of a pre-Brexit increase in immigration from those, who, in Secretary of State for Exiting the European Union David Davis' words, want to beat the deadline.²⁵ Waiting until the very last moment, i.e the end of phase 1, to agree to the date prevented migrants from coming in the meantime. The second is that the UK's government wanted to make the date a topic of negotiations to eventually agree with the EU's position (which is what happened), but in exchange get concessions elsewhere.

As of the December 8, both parties in the negotiations have agreed for the specified date to be the time of the UK's withdrawal.²⁶ The EU position prevailed.

The issue of dual-citizenship

Despite more clarity, it is important to note that the joint commitments set out above are under the caveat that nothing is agreed until everything is agreed. It therefore does

²¹ Ibid. p. 12.

²² D. Giannouloupolous, R. Ziegler, *The rights of EU27 citizens in the UK and UK citizens in the EU27. A response to Theresa May's 'fair and serious' offer*, 10 July 2017, New Europeans, Britain in Europe, p. 6.

²³ *Assessment of the Brexit Steering Group on the UK Paper "Safeguarding the Position of EU citizens living in the UK and UK Nationals living in the EU"*, Position paper of the European Parliament Brexit steering group on Brexit, Sent to Michel Barnier on 06-07-2017.

²⁴ Ibid.

²⁵ *UK may impose cut-off date on EU migrants, says Brexit minister*, The Guardian, 17.07.2017, <https://www.theguardian.com/uk-news/2016/jul/17/brexit-minister-cut-off-date-eu-migrants-david-davis>.

²⁶ *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations under Article 50 TEU on the United Kingdom's orderly withdrawal from the European Union*, 8.12. 2017, TF50 (2017) 19 – Commission to EU 27, art 8.

not come as a surprise that many migrants want to secure their position in more reliable terms. The best option to do so is to obtain British citizenship. Nearly 30,000 EU nationals applied to become British citizens in the 12 months following the referendum - almost twice as many as in the previous year.²⁷ This increase in the number of acquisition of British citizenship is especially significant in the cases of Poles, Lithuanians, Latvians and Slovaks. In the first half of 2017, there were 4,171 Poles who applied for British citizenship, up from 1,526 in the same period in 2016, meaning an increase by 270% (!).²⁸ This tendency is common for all citizens from the region. In the case of Lithuanians, the number of citizenship applications in the first quarter of 2017 rose to 192 (compared to 119 in the first quarter of 2016), in the case of Latvians, the number of citizenship applications in the first quarter of 2017 rose to 261 (compared to 89 in the first quarter of 2016) and in the case of Slovaks the number of citizenship applications in the first quarter of 2017 rose to 139 (compared to 57 in the first quarter of 2016).²⁹

However, this raises the important issue of dual citizenship. For example, Poles are in a relatively comfortable situation because even though Poland does not recognize dual citizenship, it does not forbid it either (Polish citizens are regarded as Poles by

²⁷ *EU applications for UK citizenship up 80% since Brexit*, BBC News, 25.08.2017, <http://www.bbc.com/news/uk-41053684>, *Dual nationality not an option for Dutch living in post-Brexit UK: Dutch PM*, NL Times, 18.07.2017, <https://nltimes.nl/2017/07/18/dual-nationality-option-dutch-living-post-brexit-uk-dutch-pm>.

²⁸ *Wave of re-migration*, "The Economist", 26.08.2017, s. 27.

²⁹ Home Office, National Statistics, Immigration statistics, January to March 2017 <https://www.gov.uk/government/statistics/immigration-statistics-january-to-march-2017>.

the Polish government regardless of other citizenships they may have). Therefore, a Polish citizen can retain his or her Polish citizenship and still become a British citizen. But that is not the case in all EU member states. Austria and Estonia both categorically deny dual citizenship to their citizens. Other member states allow it but on very strict terms, such as Lithuania and Slovakia, where it is only allowed at birth or through marriage, and in the Netherlands where it is permitted if the person resides in the EU.³⁰

That means that, in most cases, citizens of those states who choose to obtain British citizenship in order to maintain the life they created in the UK would lose both their birth right citizenship and their EU citizenship rights to move, reside, work, study, etc. in the EU (including their birth country). Accordingly, some states are trying to push for changes in order to protect those citizens. The Lithuanian parliament proposed a bill last April to allow Lithuanians to keep their Lithuanian passports.³¹ However, the Constitutional Court has ruled that allowing dual citizenship rights requires amending the Constitution – a move that can only be made by way of a referendum.³² Other

³⁰ Dutch citizens with multiple nationalities who live outside the EU for more than ten years can lose their Dutch nationality.

³¹ Around 200,000 Lithuanians live in Great Britain and ¼ intend to stay there. *Lithuania rushes to keep citizens as Brexit looms*, Euractiv, 12.04.2017, <https://www.euractiv.com/section/central-europe/news/lithuania-rushes-to-keep-citizens-as-brexit-looms/>.

³² The referendum may be organised together with presidential elections in 2019. However, there is a fear that due to expected low turnout the referendum might not be valid, postponing the solution for an indefinite time. There is also some opposition to the solution of accepting dual citizenship by those who argue that this

states have made more progress, such as Norway's Høyre (Conservative) Party, the largest party in the governing coalition, which, at its annual conference, voted in favour of a proposal to allow dual citizenship for its citizens. The proposal will be put before the parliament during the spring session and is expected to pass despite some opposition.³³

Yet many member states remain strictly opposed to allowing dual citizenship. The Dutch Prime Minister announced that nationals who wish to take British citizenship will be stripped of their Dutch passport.³⁴ The government even launched a campaign to explain the risks to Dutch citizens abroad. This is particularly worrying for the 100,000 Dutch nationals living in Britain. In Austria it is even worse as the issue triggered heated debates centered on the large number of people holding illegal Turkish and Austrian dual-citizenship. Interior Minister Wolfgang Sobotka's solution to the problem is to introduce fines and sanctions to make it harder to hold dual citizenship – a step into the wrong direction for Austrians in the UK. This situation creates crucial inequality of EU citizens living in the UK and divides them into those with more and less privileged legal status.

Correspondingly, UK citizens throughout the EU face a similar problem. Around

would encourage further emigration from the country.

³³ *Norway opens doors to dual citizenship*, The Local, 13.03.2017, <https://www.thelocal.no/20170313/norway-opens-doors-to-dual-citizenship>.

³⁴ *Dutch nationals taking UK citizenship 'will lose Netherlands passports'*, The Guardian, 17.07.2017, <https://www.theguardian.com/politics/2017/jul/17/dutch-nationals-brexit-uk-citizenship-lose-netherlands-passports-mark-rutte>.

900,000 UK citizens are long-term residents of other EU countries³⁵ and according to research from the London School of Economics and Political Science; at least 60% of them wish to continue to live in the EU27 after Brexit.³⁶ This is an issue for about 300,000 Brits living in Spain who will have to renounce their UK citizenship if they wish to apply for a Spanish one.³⁷ A similar issue can be witnessed in Germany where about 100,000 Brits live. Germany generally only accepts dual citizenship from Swiss and nationals of EU member states.³⁸ Therefore, while the UK remains in the EU, its nationals can apply for German citizenship without the need to renounce

³⁵ *What information is there on British migrants living in Europe?*, Office for National Statistics, 27.01.2017.

³⁶ *Poll finds that 60% of Britons want to keep their EU citizenship*, The Guardian, 01.07.2017, <https://www.theguardian.com/politics/2017/jul/01/poll-european-eu-rights-brexit>.

³⁷ Spain only allows dual citizenship to those from countries with which it has a specific connection: Ibero-American countries, Andorra, the Philippines, Equatorial Guinea and Portugal.

Dual nationality won't work for everyone who wants to keep EU citizenship after Brexit, University of Leicester Press Office, 05.04.2017,

<http://www2.le.ac.uk/offices/press/think-leicester/politics-and-international-relations/2017/dual-nationality-won2019t-work-for-everyone-who-wants-to-keep-eu-citizenship-after-brexit>.

³⁸ Additionally, (1) if the person is a refugee and holds a 1951 travel document during naturalization; (2) under Article 116 of Germany's constitution, anyone who had their German citizenship revoked during the Nazi regime for "political, racist, or religious reasons" as well as their descendants; (3) if a child born to German parents acquires another citizenship at birth or descent from one parent; (4) if a child is born on or after 1 January 2000 to non-German parents it can acquire German citizenship at birth if at least one parent has a permanent residence permit.

their UK one. After Brexit, however, new applicants will have to give up their UK citizenship.³⁹ Since the referendum, the Republic of Ireland has been the state receiving the most applications for dual nationality. The year before the referendum, 25,207 Britons applied for Irish passports, 12 months after the vote that number rose to 64,400. Ireland provides UK citizens the opportunity to retain their rights to freedom of movement and access to the EU's labour market.

Jurisdiction of the EU Court of Justice

The whole system originally proposed by the UK was to be created in the British legal system and not on the basis of an agreement with the EU. The European Court of Justice would therefore not guarantee it and all disputes would be settled in British courts.

Taking back sovereignty from Brussels was a key pillar of the 'leave' campaign; in the words of First Secretary of State Damian Green, "It's what people voted for".⁴⁰ It is therefore not surprising that Theresa May wanted to end the jurisdiction of the European Court of Justice. Speaking at a Tory party conference last October, she was categorical in her stand, "Let's state one thing loud and clear: we are not leaving the European Union ... only to return to the jurisdiction of the European Court of Justice. That's not going to happen."⁴¹ However, her position has slightly shifted since due to the

impracticality of the situation. For a start, anyone living or doing business in the EU, including any government body, is subject to ECJ jurisdiction. To be free of it would be to reject the rule of law. So unless the UK proposes to stop doing business with Europe altogether it cannot escape the ECJ completely. Furthermore, in order to avoid a cliff edge, a transition period is needed but one without the ECJ involved would be impossible - an impasse that May now realizes. When speaking to journalists following the first rounds of negotiations, the Prime Minister's official spokesperson said, "[Brexit] transition rules could involve the ECJ for a limited time, but obviously that is all a matter for negotiation."⁴²

For the moment, the UK Government 'Great Repeal Bill' being discussed in Parliament plans to convert the existing body of European Union law into UK law. That includes EU regulations, the rights as stated in the EU treaties and "historic" pre-Brexit case law of the ECJ. However, UK Prime Minister Theresa May has been clear about intending to end the supremacy of EU laws. That is, following Brexit, UK laws will take precedence over EU laws and all previous cases ruled by the ECJ will be given a legal status equivalent to UK Supreme Court judgments – effectively meaning that British judges will be able to overrule previous ECJ rulings.

This raises a number of issues, such as the question of the rights of EU citizens living in post-Brexit UK. The second major issue concerns the arbiter of future UK-EU disputes. The UK's policy paper on the topic claims that giving the ECJ authority over UK-EU disputes would be

³⁹ *German Dual Citizenship*, Dual Citizenship, <https://www.dualcitizenship.com/free-consultation/germany.html>.

⁴⁰ *European top court could have role during negotiations*, Politico, 7.10.2017, <http://www.politico.eu/article/uk-government-european-court-could-have-role-during-brexit-transition/>.

⁴¹ Ibid.

⁴² Ibid.

unprecedented and not "fair and neutral"⁴³. Instead, the UK's government has outlined several models used by other countries that, it says, show there is no need for the ECJ to be the final arbiter. All of the models make it clear that the ECJ will no longer have sole jurisdiction over disputes.

The key questions during the negotiations have been: How much influence will the ECJ retain under a bilateral agreement with the UK? And more importantly in the context of this paper; will the ECJ be able to protect the rights of EU27 nationals residing in the UK once the latter leaves the European Union?

With time the British position has changed. In her speech in Florence in September 2017, Theresa May proposed introducing a two-year transition period, during which the UK would fulfil membership obligations, including maintaining citizen's rights. During this period nothing would be changed when it comes to the position of EU migrants living in the UK. Importantly, she has also accepted that the latter's rights would be guaranteed in the EU-UK withdrawal treaty rather than by the UK legal system.⁴⁴

However the situation remained vague and unclear. When giving an interview in the Polish media, the British Home Secretary guaranteed the rights of EU citizens in the UK⁴⁵, but did not provide further details

⁴³ *Enforcement and dispute resolution: a future partnership paper*, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/639609/Enforcement_and_dispute_resolution.pdf.

⁴⁴ *Zob. Theresa May's Florence speech: key points*, The Guardian, 22.09.2017, <https://www.theguardian.com/politics/2017/sep/22/theresa-mays-florence-speech-key-points>.

⁴⁵ *Amber Rudd: Chcemy Polaków na Wyspach*, Rzeczpospolita, 27.09.2017,

apart from introduction of a new simplified online system to register migrants (for EU citizens only).

As of now, the agreement reached on December 8, 2017 establishes the rights of both UK citizens living in the EU and EU citizens in the UK following from those established in Union law. This means that the ECJ remain the ultimate arbiter of the interpretation of Union law, however, only for eight years from the date of application of the citizens' rights part (which will most likely be enacted on the date of withdrawal.) After this, "Consistent interpretation of the citizens' rights part should further be supported and facilitated by an exchange of case law between the courts and regular judicial dialogue,"⁴⁶ which is a rather vague explanation. In fact, the EU Court of Justice will no longer be in a position to guarantee the rights of EU27 nationals residing in the UK. Especially since the UK parliament retains the right to change the law, meaning that any guarantee made now could be reversed in the future.

The lack of guarantees from the British government during the first stages of the negotiations resulted in a situation where the rights of citizens, which should be treated as non-negotiable acquired rights, and become a subject of political bargaining. For many migrants this had caused uncertainty about theirs and their families' future.

Today, after 532 days, the British Government has finally guaranteed rights

<http://www.rp.pl/Brexit/309279894-Amber-Rudd-Chcemy-Polakow-na-Wyspach.html>.

⁴⁶ *Ibid.*, *Joint report from the negotiators of the European Union and the United Kingdom Government on progress during phase 1 of negotiations...*, art. 38-40.

for EU27 nationals residing in the UK. However, despite the outcome of the negotiations becoming clearer, it is still possible for the negotiations to collapse resulting in the UK leaving the Union without any agreement. Phase 1 was meant to be the easy part and it took 18 months to negotiate. Phase 2, which is paved with trade deals talks and the divorce bill negotiations, will prove harder to navigate.

What is the impact of negotiations on citizens' rights – will they come back?

According to British data, the net migration from the eight CEE states (or the EU8 in British nomenclature) into the UK has decreased drastically⁴⁷ as a result of Brexit and the knock-on effect of the fall of the pound against CEE currencies. However, while emigration has decreased, it is still too early to predict if there are any significant waves of "returns".

Research conducted at the Oxford Migration Observatory revealed that the number of citizens from the region applying for work in the UK has drastically declined since the Brexit referendum.⁴⁸ The findings are conclusive with official governmental data showing a fall in immigration and a rise in emigration among the EU8⁴⁹. This resulted in a net migration among this group of just 5,000 (in the 12 months ending in March 2017), the lowest since 2004, compared to 39,000 (in the 12 months ending in March 2016). Overall, net migration to the UK decreased significantly to 246,000 from 327,000 in the same period. On the other hand, net migration from Bulgaria and Romania (or EU2) was

less affected, 43,000 down from 61,000. Net migration from Western EU member states (or EU15) was hardly affected at all – 74,000 down from 76,000.⁵⁰

So far, this has not been confirmed in the Polish statistics, which still show an increase of migration to the UK. The Central Statistical Office of Poland has estimated the number of temporary emigrants to the UK at the end of 2016, i.e. after the Brexit referendum, but before the negotiations started, to be 788,000, up from 720,000 in the previous year.⁵¹ Newer data are not yet available.

Representatives of the Polish minority in the UK suggest that the issue of returns is present in migrants' discussions. They argue it is not only the Brexit as such but also the general atmosphere in the society towards migrants in the UK (excluding, for instance, Scotland) and wave of hate crimes against migrants that are making migrants leave.⁵² The Polish Ministry of Development estimates that up to 200,000 migrants might decide to return.

Impact on the UK labour market

On the other hand, the decrease of migration has already affected the British labour market. A shortage in labour force has started to affect multiple sectors of the UK economy, in particular those reliant on low-skilled immigrants from Central and Eastern Europe.⁵³ This shift could prove catastrophic for UK employers and

⁵⁰ *Migration Statistics Quarterly Report: May 2017*, Office for National Statistics (GB).

⁵¹ *Informacja o rozmiarach i kierunkach czasowej emigracji z Polski w latach 2004 – 2016*, Warszawa, 16.10.2017, Notatka informacyjna, Główny Urząd Statystyczny.

⁵² Conclusions from the Institute of Public Affairs debate *Maintaining the EU-27 citizens' rights in the UK after Brexit*, 28.09.2017.

⁵³ *The British jobs Brexit makes hard to fill*, The Guardian, 25.03.2017.

⁴⁷ *Return journey*, The Economist, 19.09.2017.

⁴⁸ *East European immigration to UK at lowest level in a decade*, Financial Times, 20.06.2017.

⁴⁹ EU8 refers to Poland, Lithuania, Czech Republic, Hungary, Slovakia, Slovenia, Estonia and Latvia

particularly for those relying on un-skilled migrants. Unless the UK's government puts in place a flexible and affordable immigration system for EU nationals, a significant number of employers will be forced to relocate or focus future growth outside the UK.⁵⁴

In 2016, 11% (3.4 million) of the UK labour market were non-UK nationals, with EU citizens making up 7% of the workforce (about 2.3 million). Of those, EU8 migrants are particularly prevalent in low-skilled sectors spanning from construction, farming and manufacturing to care homes, hotels and restaurants. Those are the sectors that would be particularly hard-hit by caps on immigration. In health care, the number of EU nationals registering as nurses in England has already dropped by 92% since the referendum, and a record number have been quitting the National Health Service (NHS): 2,700 EU nurses left the service in 2016, compared to 1,600 in 2014, i.e. a 68% increase.⁵⁵ The NHS is already under pressure because of long-term failure to hire enough people. It cannot lose any more personnel. Other health services, such as the adult social care are similarly affected, 5% of those working there are from the EU27, a total of about 75,000 people. Given that the sector is already vastly understaffed with around 70,000 vacancies, it cannot afford to lose access to EU migrants. Even before the Brexit vote, a report by Independent Age and the International Longevity Centre, two NGOs, estimated that by 2020, vacancies

could rise to 200,000, or 14% of the workforce required.⁵⁶ Other sectors, such as food manufacturing will be similarly hard-hit; the fruit-farming industry alone employs 29,000 seasonal workers, with the vast majority coming from Central and Eastern Europe. The National Farmers' Union, which has been pushing for a special visa system for seasonal workers on farms, warns that if a solution is not found many will be forced to move their operations to France or elsewhere in the EU.⁵⁷

An interrelated consequence brought on by a shortage of workers will be the inevitable rise in costs for the industries and eventually a rise in the prices of their products and services. As the number of surplus workers decreases, wages in the sector will begin to rise, sectoral profits will be squeezed, and investment will inevitably fall. Pro-Brexiteers have argued that that would not happen, as UK-born citizens will be there to take the jobs. However, this is highly unlikely. Research conducted by the UK Governmental Office for National Statistics shows that nationals from Romania, Bulgaria and the EU8 work more hours than UK nationals; half of the working EU8 nationals (50%) and nearly two-thirds of Romanian and Bulgarian nationals (61%) work more than 40 hours per week, compared to a third of UK nationals (32%).⁵⁸ Additionally, compared to the national average earnings (£11.30 per hour), EU8 and EU2 earn less

⁵⁴ *Press Release: Businesses sound the alarm over immigration as Brexit negotiations begin*, NIESR, 19.06.2017, <https://www.niesr.ac.uk/media/niesr-press-release-businesses-sound-alarm-over-immigration-brexit-negotiations-begin-12940>.

⁵⁵ *Record numbers of EU nurses quit NHS*, The Guardian, 18.03.2017, <https://www.theguardian.com/society/2017/mar/18/nhs-eu-nurses-quit-record-numbers>.

⁵⁶ *Somebody call a doctor*, The Economist, 30.07.2016, <https://www.economist.com/news/britain/21702650-immigration-said-stretch-services-reducing-it-may-strain-them-more-somebody-call>.

⁵⁷ *Ibid. The British jobs Brexit makes hard to fill*, The Guardian, 25.03.2017,

⁵⁸ *International immigration and the labour market, UK: 2016*, Office for National Statistics, 12.04.2017.

(£8.33).⁵⁹ According to Heather Rolfe, Associate Research Director at the National Institute of Economic and Social Research (NIESR), Britain's longest established independent research institute, businesses do not recruit EU migrants because they prefer them to British workers but because they are unable to fill the vacancies with UK-born applicants - a reason cited by 35% of the low-wage industry.⁶⁰ Whereas Brits feel like they have a choice of jobs, low-skilled immigrants do not. They take the less attractive, unwanted jobs that often involve more intensive manual tasks for longer hours and cheaper pay. It therefore seems unlikely that Brits will flock to fill the vacancies left by the immigrants. That leaves the option of employing EU nationals through a visa system, however, that could easily add hundreds of thousands of pounds to individual companies' costs.⁶¹

Conclusion

It is not only the outcome of the negotiations that matters. Even if the negotiations collapse, EU migrants in the UK would probably successfully claim their rights in the British courts and it is possible that formally at least, their legal situation would not change significantly. The problem however, is the atmosphere (hostility towards migrants) as well as the uncertainty and chaos already created. The media often report about how companies will have to cope with Brexit and the negative impact it will have on the economy. But regardless of how difficult it

will be, in the end companies will manage to struggle with the crisis with the support of their legal experts. It is the ordinary people that will have to struggle with the situation on their own, and those life-changing decisions are impacted by the political negotiations.

The situation for migrants is vague. Despite progress in the negotiations, some issues such as the exact procedures are still to be elaborated. Moreover, the end of negotiations might not necessarily mean the end of uncertainty. Even if a compromise is finally reached, the European Parliament might veto it. It has pointed out its "red lines", such as its demands, for instance, that the process of obtaining settled status be automatic.⁶² Finally, the agreement will also be voted in the UK parliament. And then, even if the deal is accepted by the parliaments, there is the question of how it will be implemented and how the British administration will cope with the millions of citizenship applications from EU citizens.

For now, this situation has resulted in a decrease in net migration to the UK, a trend that will most certainly continue and intensify but it remains difficult to foresee if it will translate into significant "returns" of migrants to their home countries. According to some migration experts, they may rather choose to move to another EU member state, i.e. Ireland. One can have doubts whether the CEE countries and their labour markets are ready to absorb such re-migration and whether they have a competitive offer (compared to the UK's) for those returning.

⁵⁹ Ibid. *International immigration and the labour market, UK: 2016*, Office for National Statistics (GB), 12.04.2017.

⁶⁰ Ibid. *Press Release: Businesses sound the alarm over immigration...*

⁶¹ Ibid. *The British jobs Brexit makes hard to fill...*

⁶² *Brexit: European Parliament says Britain's new offer on EU citizens' rights is inadequate*, "Independent", 08.11.2017, <http://www.independent.co.uk/news/uk/politics/brexit-uk-eu-citizens-rights-inadequate-european-parliament-britain-a8044331.html>.

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