
NEXT STEPS

IMPLEMENTING A BREXIT DEAL FOR UK CITIZENS LIVING IN THE EU-27



By Meghan Benton, Aliyyah Ahad, Michaela Benson,
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EXECUTIVE SUMMARY

Citizens' rights—those of both EU nationals in the United Kingdom and UK nationals in the European Union—have been one of the main negotiation topics since the 2016 Brexit referendum. But despite significant progress in agreeing the key elements of the political deal, much remains to be decided, particularly in relation to how the deal will be implemented in the remaining EU Member States (the EU-27). For Britons living in the EU-27, the subject of this report, progress on negotiations has done little to allay the sense of confusion. Many EU countries have yet to begin planning for issues likely to affect their UK nationals after Brexit, with officials interviewed in a number of Member States reporting they are unsure of whose remit these Britons will fall under.

A high-profile preliminary agreement reached in December 2017 and a draft withdrawal agreement published by the European Commission in February 2018, which was then agreed to by the United Kingdom and the EU-27 in March, have made huge progress in securing citizens' rights. Key elements of the draft deal include the right of current residents, regardless of arrival date, to stay; continued access to social-security coordination, including pensions and health care; and extended rights to family unification. But since the ultimate exit deal between the UK and EU governments must be agreed as a whole package and ratified by both the UK and European parliaments, progress at the negotiating table has not yet prompted Member State governments to introduce processes to adjust British residents' status from that of mobile EU citizens to a new, to-be-decided status. Nor has it wholly reassured UK nationals living in the EU-27. Of those surveyed to inform this report, many describe receiving conflicting advice from local bureaucrats and feeling confused by contradictory reports in the media.

Progress at the negotiating table has not yet prompted Member State governments to introduce processes to adjust British residents' status.

Meanwhile, national and local administration officials report being unsure of how to plan for or advise residents who are British while they wait for the withdrawal agreement to be finalised—and, indeed, while a non-negligible threat of a 'no-deal' scenario still looms. The desire for unity as an EU-27 bloc and the elevation of citizens' rights to a top-tier political priority have also kept some interested parties out of negotiations (from subnational governments to technical experts). As a result, planning for what happens after Brexit has been patchy and ad hoc; some countries have launched whole-of-government strategies or developed multiple contingency plans, but most are waiting for the final withdrawal agreement before moving forward.

When it comes to assessing whether people have a right to continued legal residence after the 2019–20 transition period, the United Kingdom has been forced to show its hand and carefully spell out what future systems for EU nationals in the country will look like. The remaining Member State governments, however, have not been required to thoroughly think through and make public a plan for implement a citizens' rights deal in their respective countries. As a result, the implementation phase during a post-Brexit transition period is likely to be rushed, which could result in backlogs and administrative pressures. If not handled carefully, the process of regularising the legal status of hundreds of thousands of British nationals could undermine public trust in immigration systems, encourage fraud, and create an unauthorised population of Britons left without status.

A roadmap for implementing a deal on citizens' rights in Member States is therefore urgently needed, as is clear advice for affected citizens. Key elements of such a roadmap should include:

- ***Balancing inclusiveness with preventing fraud.*** To keep bureaucratic overload and fraud to a minimum, Member States should impose prospective, rather than retrospective, requirements wherever possible. For instance, if UK nationals applying for permanent residence are required to document their legal residence in the country (i.e., that they have been exercising their treaty rights by being

in work or self-sufficient and holding comprehensive health insurance), they should be permitted to show that this is the case at present rather than at some point in the past. Retrospective requirements, in which applicants are asked to track down documents to prove their work, residence, or family status in the past, could lead to large-scale denials or incentivise fraud. Countries should also consider a flexible approach to how applicants are asked to document their residence, including by allowing people to self-report, with spot checks on some applications to reduce the incentives to cheat the system.

- ***Designing user-friendly systems.*** Where feasible, it should be possible to file an application for residence or permanent residence online. But to ensure disadvantaged groups, such as those with more limited digital literacy, are not left behind, Member States should convey information in simple terms and in English, relay messages in multiple formats, and employ user-focussed design principles. Fees should be kept to a minimum and, where entire families apply, charged per family instead of per individual. Applicants should also be given immediate proof that they have submitted an application for status (both in hard copy and digitally) so they have something concrete to share with employers, landlords, and other actors seeking to verify their residence status.
- ***Employing smart outreach.*** Outreach strategies should be considered as part of a tiered process in the run-up to and aftermath of Brexit. Member States should begin by updating their official guidance to reflect recent agreements, and local advice centres could begin advising citizens to collect documentation that is likely to be of use later. Once the withdrawal agreement is published and the window for registration open, UK nationals should be able to apply for status in a range of accessible and familiar settings, from libraries and pubs to hospitals and schools. Taking a behavioural-insights approach to outreach could enable Member States to pilot ways to improve applications rates, for instance by incentivising UK nationals who have already applied for status to recruit their friends to do the same. The UK government, through the Foreign Office, may also wish to make a fund available for local community groups and associations in the EU-27 that are supporting Britons as they apply for status and negotiate a host of other Brexit-related changes.

While the administrative headaches of setting up new systems are likely to consume considerable energy, Brexit could also prove an opportunity for Member States to rethink their approaches to integration. The symbolic nature of granting a new, more settled status to UK nationals resident in EU countries could enable Member States to reconsider the services in place to support the inclusion of mobile EU citizens and Britons (whatever status they may take in the future) in addition to more readily available programmes for third-country nationals. Member States could use Brexit as an opportunity to encourage their British nationals to improve their host-country language proficiency, register for local services (especially for those who are used to returning to the United Kingdom for health care), or become citizens. At an absolute minimum, however, Member States should endeavour to avoid creating a large unauthorised population—a risk other regularisation processes have shown to be very real.

I. INTRODUCTION

The period since 23 June 2016, when UK voters opted to leave the European Union, has been a tumultuous one for UK nationals living in the other 27 EU Member States (the EU-27). As exit negotiations between EU and UK officials stretch on, many remain uncertain of whether they will be able to stay in their countries of residence after Brexit. From high-skilled workers employed by multinational corporations in the Randstad megaregion in the Netherlands to small business owners in Cyprus and retirees on the Costa Brava in Spain,

UK citizens living in the EU-27 are a mixed bunch.¹ And while retaining the basic right to continued residence has been the pre-eminent priority for most, these UK nationals have much more at stake as they lose their EU citizenship. Some of the most prized entitlements include the guarantee that state pensions received abroad will increase at the same level as domestic pensions, the right to have non-EU family members join Britons in their country of residence, access to local health care on the same terms as host-country nationals, and the right to claim unemployment benefits based on contributions made in other Member States.

In December 2017, EU and UK negotiators struck an agreement in the form of a joint report on the progress made during Phase 1 of negotiations concerning the United Kingdom's orderly withdrawal from the European Union.² This long-awaited document paved the way for the next stage of negotiations on the future trade deal between Britain and the European Union. As a condition for moving ahead, EU negotiators had requested that they see 'sufficient progress' on three topics: citizens' rights (both EU nationals in the United Kingdom and UK nationals in the European Union), the Irish/Northern Irish border, and the financial settlement that the UK government would owe on departure. On 28 February 2018, the European Commission published a draft withdrawal agreement that fleshed out how the final agreement could work in practice.³ This legal text achieved preliminary agreement—at least on the portion concerning citizens' rights—among all current EU Member States, including the United Kingdom, in March 2018.⁴

While retaining the basic right to continued residence has been the pre-eminent priority for most, these UK nationals have much more at stake as they lose their EU citizenship.

The citizens' rights part of the December agreement was widely welcomed by European and Member State governments, with the press reporting that the United Kingdom had given way on some key sticking points, such as the right of EU nationals to bring family members into the United Kingdom in the future without being subject to income requirements. It also delivered a lot for UK nationals abroad, including continued access to health care. But some commentators pointed to a degree of asymmetry in the deal, which focuses heavily on the situation of EU nationals in Britain, while being silent (if not contradictory) on the implications of Brexit for UK nationals abroad.⁵ The response from interest groups such as the British in Europe was lukewarm, observing that much had been left out of the deal—including, notably, whether UK nationals

- 1 For a discussion of the diversity of the UK population living in the EU-27, see Michaela Benson, 'Remembering Brexit's Impact on the British in the EU-27', *The UK in a Changing Europe*, 15 September 2017, <http://ukandeu.ac.uk/remembering-brexit-impact-on-the-british-in-the-eu27/>; Meghan Benton, *Safe or Sorry? Prospects for Britons in the European Union after Brexit* (Brussels: Migration Policy Institute Europe, 2017), www.migrationpolicy.org/research/safe-or-sorry-prospects-britons-european-union-after-brexit.
- 2 European Union and the UK Government, *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* (Brussels: European Commission, 2017), https://ec.europa.eu/commission/sites/beta-political/files/joint_report.pdf.
- 3 European Commission, 'European Commission Draft Withdrawal Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community' (position paper TF50 [2018] 33, European Commission, Brussels, 28 February 2018), https://ec.europa.eu/commission/publications/draft-withdrawal-agreement-withdrawal-united-kingdom-great-britain-and-northern-ireland-european-union-and-european-atomic-energy-community_en.
- 4 European Commission, 'Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community Highlighting the Progress Made (Coloured Version) in the Negotiation Round with the UK of 16-19 March 2018' (position paper TF50 [2018] 35, European Commission, Brussels, 19 March 2018), https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf.
- 5 For instance, one legal expert observed that the detailed rules set out in the joint report on simplifying the application process 'in principle apply to both sides but are actually focussed on the UK side'. See Steve Peers, 'The Beginning of the End? Citizens' Rights in the Brexit "Sufficient Progress" Deal', *EU Law Analysis*, 9 December 2017, <http://eulawanalysis.blogspot.co.uk/2017/12/the-beginning-of-end-citizens-rights-in.html>.

resident in the EU-27 countries will have a right to onward movement within the bloc.⁶ Finally, lack of clarity over the legal status of the deal, exacerbated by contradictory comments from British ministers, did little to allay fears.⁷

With negotiations evolving rapidly, this report examines the issues facing UK nationals living abroad in the European Union, a set of topics that has been much less discussed and studied than those facing Europeans in Britain.⁸ It considers carefully the progress that has been made on negotiations—from the planning prior to the December joint report to recent discussions of post-Brexit administrative procedures.⁹ It first examines how the process of negotiating citizens’ rights was managed (including how Member State governments communicated with and advised their British residents, and how these Britons responded), before turning to the implementation questions and policy challenges that remain unresolved following the December report and draft withdrawal agreement. Finally, it concludes by outlining recommendations for building a fair, transparent, and streamlined post-Brexit system for regularising the status of UK nationals abroad.

Lack of clarity over the legal status of the deal, exacerbated by contradictory comments from British ministers, did little to allay fears.

This study draws its findings from two research streams. The first, conducted by the Migration Policy Institute Europe (MPI Europe), encompasses expert interviews with 38 EU and Member State officials. These include policymakers from seven of the top ten UK-national-hosting EU countries (Cyprus, France, Germany, Ireland, the Netherlands, Spain, and Sweden),¹⁰ which together are home to an estimated 85 per cent of UK citizens living in the EU-27.¹¹ This stream also includes analysis of interest-group responses and parliamentary inquiries, and a review of previous regularisation schemes in Europe and elsewhere. The second research stream was conducted by the BrExpats research team at Goldsmiths University and includes more than 100 in-depth interviews with UK citizens living in France and Spain, and ongoing input from a panel of 180 UK citizens living across the EU-27.

6 Kathryn Dobson, ‘Where Does the December Agreement Leave Me?’, British in Europe, 18 December 2017, <https://britishineurope.org/where-does-the-december-agreement-leave-me/>.

7 For instance, UK Secretary for Exiting the European Union David Davis received considerable criticism for referring to the deal as a ‘statement of intent’ rather than a legally enforceable agreement. See Jennifer Rankin and Daniel Boffey, ‘David Davis Scrambles to Salvage EU Relations after “Damaging Trust”’, *The Guardian*, 12 December 2017, www.theguardian.com/politics/2017/dec/12/david-davis-has-damaged-trust-in-the-uk-for-brexit-talks-says-verhofstadt.

8 Academics have long noted a gap in research on UK nationals in the European Union, so this is not necessarily a new, post-referendum development. It has, however, taken on new importance amid Brexit negotiations. Among the limited research that does exist on this topic, see Michaela Benson, *The British in Rural France: Lifestyle Migration and the Ongoing Quest for a Better Way of Life* (Manchester: Manchester University Press, 2011); Karen O’Reilly, *The British on the Costa Del Sol: Transnational Identities and Local Communities* (London: Routledge, 2000).

9 The report does not directly engage with the question of what will happen should negotiators fail to reach a deal. For a discussion of this worst-case scenario, see Benton, *Safe or Sorry?*

10 These seven countries were chosen from among the top ten UK-national-hosting EU countries to include the top five in absolute number of UK citizens (Spain, France, Ireland, Germany, and the Netherlands); one small country in which UK nationals are fewer in number but nonetheless make up a large share of the population (Cyprus, where UK-born individuals make up 5 per cent of the overall population); and one country in Northern Europe (Sweden) because of unique bureaucratic implications associated with its registration systems.

11 Based on available data on UK citizens living in the European Union from the 2011 European census and the Central Bureau voor de Statistiek (CBS) Statline in the Netherlands. See UK Office of National Statistics, ‘What Information is There on British Migrants Living in Europe?: Jan 2017—Table 1: The Age of British Citizens Living in Europe in 2011’, updated 27 January 2017, www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/whatinformationisthereonbritishmigrantslivingineurope/jan2017#number-of-british-citizens-living-in-europe-in-2011-by-age. For a full discussion of the data on UK nationals living in the EU-27 (and their limitations), see Benton, *Safe or Sorry?*

II. CONFUSION AND COMPLEXITY IN THE NEGOTIATIONS PROCESS

The issue of citizens’ rights swiftly became one of three political priorities that Michel Barnier’s team, the EU Taskforce on Article 50 Negotiations with the United Kingdom, wanted both parties to address before the negotiations could progress to discussions of other aspects of the future EU-UK relationship. But despite this priority treatment, the last 18 months have been a period of considerable anxiety for many UK nationals living in EU-27 countries and for their EU-national counterparts in the United Kingdom.¹² While the contents of the December 2017 joint report and the February 2018 draft withdrawal agreement are promising and begin to create some level of certainty, the process has been a difficult one for Member States to navigate. There is no precedent for Brexit, and all parties involved are being cautious, learning as they go along, and trying to say ‘as little as possible’,¹³ which has only added to the sense of confusion.

This section explores progress that has been made since negotiations on citizens’ rights began in earnest in June 2017, as well as government and UK-citizen responses to it in key Member States.

A. Planning on citizens’ rights during the negotiations

Despite widespread concern among EU and Member State policymakers that Brexit would set an undesirable precedent for other countries to follow, the EU-27 have shown considerable goodwill towards their British residents. In interviews with national and local government officials, little ill will was expressed towards UK citizens themselves—even as authorities lamented the decision to call the referendum and expressed disappointment in its result.¹⁴

However, planning in Brussels and in individual Member States for UK-national populations living in the European Union after Brexit has been hampered by the sensitivity of the topic, the volatility of the negotiations,¹⁵ and, in some cases, by naivety. Some officials reported that many in government had a feeling of ‘trusting that everything will carry on the way it is’¹⁶ or confidence in their ability to manage any eventuality, even if ‘we don’t know what to do yet’.¹⁷ Some also expressed feeling like their hands were tied by the need for secrecy and unity, often to their own frustration.

12 Karen O’Reilly, *What Does Brexit Mean for British Citizens Living in the EU-27? Talking Brexit with the British in Spain* (London: Goldsmiths University, 2017), <https://brexitbritsabroad.com/wp-content/uploads/2017/12/The-British-in-Spain-Web.pdf>; Karen O’Reilly, ‘Anxiety and Frustration in the Day-to-Day Lives of British Abroad’, *Brexit: Brits Abroad*, 17 July 2017, <https://brexitbritsabroad.com/2017/07/17/anxiety-and-frustration-in-the-day-to-day-lives-of-british-abroad/>; Michaela Benson, *What Does Brexit Mean for British Citizens Living in the EU-27? Talking Brexit with the British in Rural France* (London: Goldsmiths University, 2017), <https://brexitbritsabroad.com/wp-content/uploads/2017/09/The-British-in-Rural-France-v3.2.pdf>.

13 Migration Policy Institute Europe (MPI Europe) interview with officials from the Dutch Ministry of Employment and Social Affairs, The Hague, 21 September 2018.

14 MPI Europe interview with French government officials, Paris, 25 October 2017; MPI Europe interview with Rudolf Bunte, Head of the Coordination Office for Migration, and Wolfgang Müller, Managing Director of European Cooperation, German Federal Employment Agency—EU Branch, 21 November 2017; MPI Europe interview with Michael Maschke, Official, Office for the Equal Treatment of EU Workers, German Chancellery, Department of the Representative for Migration, Refugees, and Integration, 29 November 2017; MPI Europe interview with Sharon Mullen, Business Manager, Rotterdam Partners and Gladys Tuur, Advisor, Rotterdam Expat Centre, 20 September 2017.

15 MPI Europe interview with Anne Mulder, Former Brexit Rapporteur, Government of the Netherlands, The Hague, 21 September 2017.

16 MPI Europe interview with Linda Leblanc, Municipal Councillor, and Marinos Lambrou, Mayor, Municipality of Pegiea, Cyprus, 9 November 2017.

17 MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs.

The fact that the issue of citizens' rights was of first-order political priority planted it firmly on the political track, at times excluding from discussions bureaucrats well-suited to weigh in on highly technical issues. At others, this meant administrative and logistical questions took a back seat to citizens' rights as a diplomatic issue (specifically, securing promises to protect the rights of EU nationals in the United Kingdom). For instance, one consular interviewee described ministers making commitments to prioritise citizens' rights at the highest political level,¹⁸ but in most cases this meant Member State officials lobbying for the rights of their citizens in the United Kingdom, not planning for the complex bureaucratic task of adjusting to the changing legal status of UK-national residents in their countries.¹⁹ Others characterised citizens' rights as less significant than other Brexit-related migration issues, such as the possible diversion of the flow of Eastern European migrant workers from the United Kingdom to Germany.²⁰

The consequences of this state of affairs include:

- **Lack of coordinated response.** Some countries engaged multiple actors in early planning, while others focussed exclusively on the centralised negotiations.²¹ Interview respondents highlighted the vast array of implications these issues hold for different levels of government—from the potential economic impact on cities with large UK-national populations to the possibility that political dynamics may shift in some localities if UK nationals lose their local voting rights. Some also described a sense of asymmetry in the involvement of only national governments in negotiations when subnational governments arguably have a greater stake in the outcome.²² Others noted that officials with technical expertise were excluded from the formal negotiation processes.²³ In Member States, agencies that deal with everyday employment or administrative issues for UK nationals were delayed from taking planning action by the absence of formal direction from the ministerial level.²⁴ There has also been a degree of 'passing the buck' among government departments, in part because UK nationals now occupy a strange no-man's-land between ministerial portfolios responsible for EU citizens and those responsible for third-country nationals. Contrary to some predictions before Brexit negotiations began, the EU-27 bloc maintained rigorous discipline and avoided bilateral engagement with the United

18 MPI Europe interview with Aidan Liddle, Deputy Head of UK Mission to Sweden, 16 January 2018.

19 MPI Europe interview with French government officials.

20 MPI Europe interview with Rudolf Bünthe and Wolfgang Müller.

21 Ireland, which felt it had a lot to lose from Brexit, swiftly put in place a whole-of-government strategy, organised by the Taoiseach. By contrast, German officials described having a single point of contact for Brexit in the public employment service and France has appointed a Brexit taskforce person. MPI Europe interview with representative of Irish diplomatic staff, Brussels, Belgium, 1 February 2018; MPI Europe interview with Rudolf Bünthe and Wolfgang Müller; MPI Europe interview with French government officials.

22 In Germany, federal states have been pushing for greater involvement in the negotiations (in large part because they will be responsible for implementation) but have had to make do with being briefed on progress. MPI Europe interview with Anja Stiedenroth, Special Advisor for Cabinet, Federal Council and European Affairs, Berlin Senate, Department for Integration, Labour, and Social Affairs, 27 November 2017. A report from the Spanish Delegation of the Committee of the Regions, an EU advisory body of subnational government representatives, has also called for regional and local governments to have a greater say because of Brexit's regional implications, including the reliance of some localities on a British workforce. See Lucía Abellán, 'Las Comunidades Españolas Temen el Impacto de un Brexit duro', *El País*, 11 January 2018, https://politica.elpais.com/politica/2018/01/10/actualidad/1515597406_651975.html.

23 In Brussels, European Commission officials have reportedly been excluded from meetings on the future EU-UK relationship and have instead relied on informal feedback on the taskforce's activities from permanent representatives, despite their work being heavily implicated by what is decided. MPI Europe interview with Member State diplomatic official, Brussels, 22 January 2018.

24 For instance, in Sweden, little planning has taken place as the government had to wait for legal text before they could understand what instructions to give agencies that have day-to-day responsibilities for dealing with EU nationals (e.g., the public employment service). MPI Europe interview with Jon Strath, Head of Unit for National Coordination EURES, Swedish Public Employment Service, 27 November 2017.

Kingdom.²⁵ UK embassies described finding it difficult to work with Member State governments that were uneasy about any type of bilateral planning while negotiations as a bloc were ongoing.²⁶

- **Limited contingency planning.** While it was impossible to develop concrete plans, at least not prior to the December joint report, some contingency planning was happening behind the scenes. Ireland started planning for Brexit even before the 2016 referendum, and the Dutch government invested significant resources in developing multiple contingency plans (with officials describing Brexit as one of the hardest policy problems they have ever had to solve, and one that caused a new headache each day).²⁷ Timing difficulties were a common theme. Government interviewees described simultaneously wanting to wait for an agreement in Brussels but not wanting to wait so long to plan that it hindered implementation. As one respondent explained, ‘although obviously they won’t reach a final deal till March 2019 [...] it’s going to be very quick work for us then to start planning.’²⁸ Another pointed to the potential difficulties of the United Kingdom having to agree 27 bilateral agreements in a timely manner in the case of a ‘no deal’.²⁹ Some interviewees also described being eager to prepare for any potential eventualities of the negotiations, but feeling confined to sourcing available data from respective national ministries. According to one German official, although Brexit is ‘always in the back of our minds’ preparations were initially limited: ‘we are doing assessments, we are observing what is happening, we are listening’.³⁰

Government interviewees described simultaneously wanting to wait for an agreement in Brussels but not wanting to wait so long to plan that it hindered implementation.

- **Uncertainty about how to communicate publicly about Brexit.** In the absence of formal (or at least public) government planning in most Member States, Brexit-related advice and public services were largely provided in an ad hoc fashion and at the discretion of local institutions. For instance, the Expacenter in Amsterdam opened a new Brexit information point, and the City of Amsterdam commissioned research into the likely impacts of Brexit on its British residents.³¹ However, local authorities could offer little concrete reassurance (at least prior to the December joint report), with most events functioning more like ‘collective therapy’ than clear guidance, as one consular interviewee described it.³² One civil servant described this inability to give clear advice as particularly painful.³³ And even after the issuance of the joint report, government agencies and advisory organisations have taken inconsistent approaches to how (and indeed whether) to update the information they offer the public.

25 In the run up to the December council meeting, one interviewee described avoiding British colleagues in the street so as not to risk accidentally giving away information. MPI Europe interview with Member State diplomatic official, Brussels, 22 January 2018.

26 MPI Europe interview with Aidan Liddle.

27 MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs.

28 MPI Europe interview with Jon Strath.

29 MPI Europe interview with Sophie Germont, German Liaison Office Contact Point for International Health Insurance - International Matters within the EU, 30 November 2017.

30 MPI Europe interview with Erkan Ertan, Advisor for EU Matters, Senate Chancellery Berlin, 30 November 2017.

31 Annette Schrauwen, *Tesseltje de Lange, and Jan Kraak, Britse Amsterdammers na de Brexit* (Amsterdam: University of Amsterdam, 2017), <http://acelg.uva.nl/content/news/2017/07/brexit-report-amsterdam.html>.

32 MPI Europe interview with British Embassy official.

33 MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs.

- **Legal uncertainty.** The complexity of the task has also been underscored by disagreements among legal scholars as to how extensive changes to the overall body of EU law will need to be.³⁴ For instance, the government of the Netherlands commissioned research into the legal amendments that would be required (including whether the Vienna Treaty of Treaties would mean that, should no deal be reached between EU and UK negotiators, previous treaties would be reactivated or whether more recent EU legislation overrode former bilateral agreements) and concluded that it would be necessary to, at the very least, update expired agreements.³⁵ A German respondent, by contrast, voiced a belief that pre-existing bilateral agreements would automatically be applicable in case of a ‘no deal’.³⁶

In sum, the period since the Brexit referendum has been characterised by a sense among all interested parties that they are facing an unprecedented bureaucratic nightmare, with no single actor holding a clear remit to plan for such complexity. Many officials described being unable to comment on Brexit, either because it was beyond their authority, they had been forbidden to do so, or they hadn’t yet begun to address it. With final negotiations widely predicted to run right up until March 2019, when the United Kingdom is due to leave the Union, the negotiations process and its associated delays have shrunk the breathing space public authorities and UK citizens in the EU-27 might have had to develop and implement plans for life after Brexit.

B. The December joint report, draft withdrawal agreement, and their implications

The joint report agreed on 8 December 2017, just before the European Council meeting a few days later, represented a significant milestone in Article 50 negotiations. It discussed progress on the top priority areas for negotiators: citizens’ rights, the Northern Irish/Irish border, and the Brexit ‘divorce settlement’.³⁷ The deal was warmly welcomed, with policymakers across the EU-27 and the United Kingdom breathing a sigh of relief as a ‘no-deal’ situation became considerably less likely. Moreover, many of the main sticking points that had hobbled negotiations thus far had been resolved—mostly by the UK government backing down (most notably, on how the rights of EU nationals currently living in the United Kingdom would be adjudicated after Brexit). However, several issues were put aside for future discussion, including the question of whether UK nationals currently living in the EU-27 will be able to move freely onward to other EU countries, and how crossborder services and posted workers will be affected.³⁸ As a result, the response from interest groups was more lukewarm.³⁹

34 Legal experts in a December roundtable organised by MPI Europe described being unsure of whether a post-Brexit legal status for UK nationals would need to be enshrined in EU law or within national laws, and what changes to EU regulations would need to be made to ensure UK nationals were treated as either third-country nationals or as holders of a new status. For instance, EU law grants third-country nationals who are long-term residents of signatory EU Member States the right to permanent residence after five years, meaning that even without a withdrawal agreement, UK nationals who have lived in a signatory Member State for five years or more have a *prima facie* right to permanent residence. However, the discussion in the roundtable made clear that EU law would not necessarily treat UK nationals as third-country nationals in the case of a ‘no-deal’. Participant comments during the roundtable meeting ‘Beyond “Deal or No Deal”: Planning for the Next Phase for UK Nationals in the EU After Brexit’, Barrow Cadbury and MPI Europe, London, United Kingdom, 5 December 2017. See also Benton, *Safe or Sorry?*

35 Benton, *Safe or Sorry?*

36 MPI Europe interview with Rudolf Bünthe and Wolfgang Müller.

37 European Union and the UK Government, *Joint Report from the Negotiators*.

38 European Commission, ‘Joint Technical Note Expressing the Detailed Consensus of the UK and EU Positions on Citizens’ Rights’ (joint technical note, European Commission, Brussels, 8 December 2017), https://ec.europa.eu/commission/sites/beta-political/files/citizens_rights_-_comparison_table.pdf.

39 Two such groups—British in Europe (which lobbies for the rights of UK nationals in the European Union) and the 3million (which lobbies for the rights of EU nationals in the United Kingdom)—have continually called for the deal on citizens’ rights to be ringfenced so that it does not turn on the eventual outcome of the withdrawal negotiations.

A few months later, on 28 February 2018, the European Commission published a draft withdrawal agreement, which it described as translating ‘our joint commitments’ into legal text. While this has since received preliminary agreement from the United Kingdom and other EU Member States,⁴⁰ the final withdrawal agreement will need to be approved by both the UK and European parliaments—a next step that will bring new actors into the negotiating process.⁴¹ It is notable that an agreement with some specifics on how EU and UK citizens will be registered and regularised will have the force of international law, since these topics usually remain firmly in the domain of domestic law.

Taken together, the main elements of the EU-UK deal thus far include:

- **Scope.** All UK nationals who arrive in an EU-27 country and EU nationals who arrive in the United Kingdom during the transition period will be covered (29 March 2019 to 31 December 2020). Those covered by the agreement will be covered for life—as long as they continue to meet certain conditions. For these individuals and their families, post-Brexit entry and residence systems are to be built on the infrastructure of the Free Movement Directive.⁴² UK and EU nationals who have not already acquired permanent residence by the end of the transition period will be able to do so by fulfilling the requirements set out in this directive (i.e., by residing legally in a Member State continuously for five years).
- **Family unification.** Commentators had predicted that a narrow definition of family would be adopted to govern who qualifies to join UK nationals living in the EU-27 and EU nationals in the United Kingdom, but in fact all family members referred to in the Free Movement Directive are to be covered (which includes dependent adult children, parents, and grandparents as well as spouses/partners and minor children), as are future biological and adopted children. Moreover, future partners of UK nationals and their family members will be covered (groups excluded from the December agreement). However, for unregistered partners—a category that often includes same-sex couples in countries where their unions are not recognised—the requirements are more strict (see Section IV). Additionally, family members who are not direct ascendant or descendant relatives (e.g., siblings, aunts and uncles) are only covered if they were already living in the host Member State or had applied for residence before the withdrawal date.
- **Streamlined administrative procedures.** The procedures Member States and the United Kingdom create to adjust the status of their UK or EU residents must be transparent, smooth, and streamlined, focussing on what is ‘strictly necessary and proportionate to determine whether the criteria have been met.’⁴³ Those who have applied for permanent residence should be able to convert this status to any new document or system free of charge. For those applying for residence, fees must not exceed those charged for citizens applying for similar documents.⁴⁴ The agreement also sets out that there should be flexibility in the case of errors, omissions, or delays on the part of applicants, and sets out the types of documentation that will be accepted for each group (e.g., family members, workers, students).⁴⁵

40 On 19 March 2018, a draft of withdrawal agreement was published with highlighted text that showed full agreement on the issue of citizens’ rights. See European Commission, ‘Draft Agreement on the Withdrawal of the United Kingdom’.

41 The approval of the UK Parliament will be sought through a separate withdrawal and implementation bill, which could be a messy process given the current government lacks a parliamentary majority. The primary interest of the European Parliament in the withdrawal agreement is the topic of citizens’ rights, so it has already been playing an important role and the taskforce has been making efforts to keep it inside.

42 ‘Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and Their Family Members to Move and Reside Freely within the Territory of the Member States Amending Regulation (EEC) No 1612/68 and Repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC’, *Official Journal of the European Communities* L 158/77, 30 April 2004, <http://eur-lex.europa.eu/eli/dir/2004/38/oj/eng>.

43 European Union and the UK Government, *Joint Report from the Negotiators*, 3.

44 It is unclear what would be considered ‘similar documents’.

45 European Commission, ‘Draft Agreement on the Withdrawal of the United Kingdom’.

- **Adjudication and monitoring.** Addressing another sticking point in the negotiations, UK and EU negotiators agreed in the joint report that the European Court of Justice would remain the ‘ultimate arbiter of the interpretation of Union law’, meaning UK courts should continue to have due regard to its decisions in relation to EU nationals in the United Kingdom.⁴⁶ The implementation of administrative procedures for UK nationals in the European Union will be monitored by a joint committee co-chaired by EU and UK representatives, and noncompliance with rulings by the court can be sanctioned with a lump sum or penalty payment.⁴⁷ Unlike other domains of the withdrawal agreement, the European Union and the United Kingdom would be prohibited from suspending the agreement’s provisions on citizens’ rights.⁴⁸
- **Social-security coordination and health-care access.** The joint report makes clear that the principle of ‘aggregation’ in social-security coordination will remain, meaning that UK citizens living in an EU-27 country will be able to claim social-security benefits (such as unemployment benefit) where they currently live on behalf of the countries in which they previously resided.⁴⁹ The draft withdrawal agreement gives the joint committee of EU and UK representatives the power to revise the withdrawal agreement to align it with any future amendments on social-security coordination. It also reduces the portability of social-security rights for UK nationals; social-security coordination will only continue to apply as long as the UK national lives or works in the country where they live or work at the end of the transition period. Access to health care for UK-national residents of Member States will continue to follow current rules, meaning they can access health care on the same terms as nationals of the country in which they reside (reimbursed by the country in which they are insured/receive their pension, if relevant).

Confusion over the status of the December deal and subsequent political agreements has permeated the advice given by EU Member States to resident UK nationals.

But despite the progress made in the joint report and draft withdrawal agreement, a number of challenges remain. First, there is a lingering risk that everything could fall through. The caveat that ‘nothing is agreed until everything is agreed’ was included on the front cover of the joint report, a phrase that would reverberate in comments from ministers and concerns from interest groups in the weeks that followed its publication.⁵⁰ Although this phrase was dropped from the February and March draft agreements, there is still a lingering sense of uncertainty. Second, confusion over the status of the December deal and subsequent political agreements has permeated the advice given by EU Member States to resident UK nationals. While the United Kingdom has updated its official advice in line with the draft agreements, other countries have taken a more cautious

46 The United Kingdom should also establish a mechanism to enable UK courts or tribunals to ask the European Court of Justice questions of interpretation where relevant to a case, for eight years. See European Commission, ‘Joint Technical Note Expressing the Detailed Consensus of the UK and EU Positions on Citizens’ Rights’, 15.

47 European Commission, ‘Questions and Answers: Publication of the draft Withdrawal Agreement between the European Union and the United Kingdom’ (fact sheet, European Commission, Brussels, 28 February 2018), http://europa.eu/rapid/press-release_MEMO-18-1361_en.htm.

48 Ibid.

49 For a more detailed explanation of the EU social-security system, see Meghan Benton, *Reaping the Benefits? Social Security Coordination for Mobile EU Citizens* (Brussels: MPI Europe, 2013), www.migrationpolicy.org/research/reaping-benefits-social-security-coordination-mobile-eu-citizens.

50 For instance, it was picked up by the Bulgarian Prime Minister who elaborated to say: ‘I still consider that nothing regarding Brexit has been decided.’ See Georgi Gotev, ‘Bulgarian PM on Brexit: “Nothing Is Agreed until Everything Is Agreed”’, EURACTIV, 15 December 2017, www.euractiv.com/section/uk-europe/news/borissov-on-brexit-nothing-is-agreed-until-everything-is-agreed/. On the BBC Andrew Marr Show, UK Secretary of State for Exiting the European Union David Davis suggested that the deal was not binding. See Gaby Hinsliff, ‘Just Seven Words Are Keeping a Brexit Deal Afloat for All Sides’, *The Guardian*, 11 December 2017, www.theguardian.com/commentisfree/2017/dec/11/brexit-politics.

approach, either reiterating that the United Kingdom remains an EU Member State and nothing has changed (so far) or making clear that nothing has been conclusively decided.⁵¹

Finally, although the provisions of the joint report claim to apply to both sides, it is clear that they are there largely designed to commit the United Kingdom, not the EU-27, to further action.⁵² The draft withdrawal agreement goes some way to compensate for this imbalance by providing clearer guidelines on what obligations EU Member States have vis-à-vis UK nationals (e.g., what documents they can request as evidence of residence and on what timeline). Nevertheless, the finer details of what implementation will look like in the respective countries have been left fairly open.

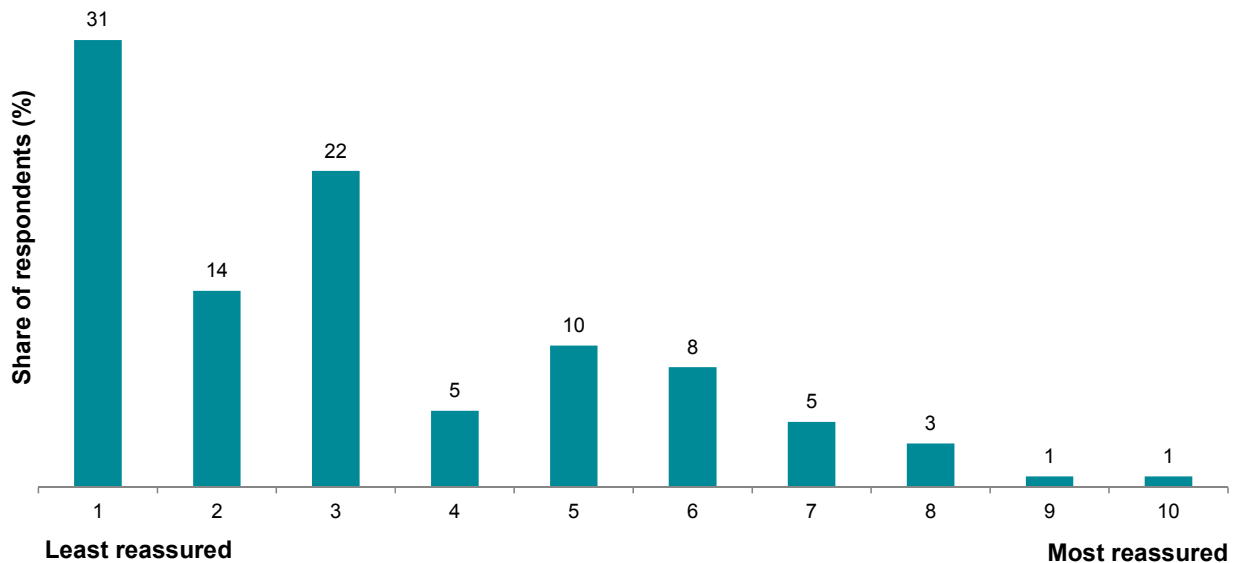
C. *The citizens' response*

The December 2017 joint report on citizens' rights received a mixed reception from those who would be most affected by it. Drawing on responses to a survey of UK citizens living in the EU-27, conducted by the Goldsmiths BrExpats research team, this section takes a closer look at the citizens' responses to this joint report. The survey was circulated to UK citizens living in France and Spain who had been previously interviewed (n=100) and to Britons taking part in the citizens' panel (n=180),⁵³ eliciting a total of 131 responses.⁵⁴ The participants in the research were recruited through social media and personal connections; this is thus not a representative sample but a means of exploring some of the key issues related to Brexit negotiations that are affecting people's lives.

Among the respondents to this post-joint-report survey, many expressed a lack of confidence that the United Kingdom would act in the interests of its overseas citizen population.⁵⁵ As shown in Figure 1, more than 70 per cent of respondents answered the question 'Are you reassured by the joint report?' by saying they were not reassured (marking 4 or lower on a sliding scale in which 1 was 'least reassured', 5 was 'neutral', and 10 was 'most reassured'). Some respondents highlighted feeling that citizens' rights were being treated as less important by negotiators relative to a future trade deal, while others voiced concerns that the joint report would mean the issue of citizens' rights was put to bed (with finer details left unresolved). Respondents also reported that they were not convinced UK authorities would honour the deal after the withdrawal and transition period, and some repeated the phrase 'nothing is agreed until everything is agreed'.

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- 51 The government of the Netherlands, which has published a question-and-answer sheet for Britons living in the country on its website, did not update the document following the joint report or the recent agreement on the draft withdrawal text. The document, which was authored in September 2017, still says 'It is not yet known if there will be any changes in the longer term to Dutch social-security rights. This will depend on the outcome of the negotiations.' See Government of the Netherlands, Ministry of Foreign Affairs, 'Questions and Answers about the Impact of Brexit on British Nationals in the Netherlands' (working document, September 2017), www.government.nl/documents/publications/2017/07/20/questions-and-answers-about-impact-brexit-on-british-nationals-in-netherlands. Similarly, the Citizens Information Bureau in Ireland simply makes clear that 'your rights have not changed', including social-security and social-welfare payments. See Citizens Information, 'Guide to Brexit', accessed 22 February 2018, www.citizensinformation.ie/en/reference/guides/brexit.html. Representatives of the SOLVIT service, which advises mobile EU nationals, have also confirmed that their advice had not changed. MPI Europe interview with representatives of SOLVIT Sweden, 7 March 2018.
- 52 For instance, requirements for what 'streamlined' will mean in the context of the application process point to a footnote referencing the UK government's commitments regarding what the system will look like. See European Union and the UK Government, *Joint Report from the Negotiators*.
- 53 See Brexit: Brits Abroad, 'Who Are Our Citizen Panellists?', accessed 12 March 2018, <https://brexitbritsabroad.com/brexpats-the-project/join-our-citizens-panel/who-are-our-citizen-panellists/>.
- 54 This figure includes 88 panellists and 43 interviewees.
- 55 For more information on how this process is being perceived by Britons living in different EU Member States, see Brexit: Brits Abroad, 'The Brexit Brits Abroad Reports', accessed 10 April 2018, <https://brexitbritsabroad.com/brexit-brits-abroad-reports/>.

Figure 1. EU-27 resident UK citizens’ responses to the question: ‘Are you reassured by the joint report?’, 2018



Sources: Brexit: Brits Abroad, ‘Poll: Are You Reassured?’ (online poll of UK nationals living in the EU-27, January 2018). For more on this project, see Brexit: Brits Abroad, ‘The Brexit Brits Abroad Reports’, accessed 10 April 2018, <https://brexitbritsabroad.com/brexit-brits-abroad-reports/>.

Sentiments, such as those embodied by the following quotations from British residents of France and Spain, were echoed in many survey responses and interviews:

The UK government’s statements mean nothing to us. They have proved time and again that they will say one thing and do another. They have proved that they have zero interest or concern for their citizens abroad so, in the words of David Davis ‘Nothing is agreed until everything is agreed’.
 – UK-citizen resident of France

We certainly do not have a government or indeed any political party to protect us. The European Parliament only has the nuclear option of veto which they will not exercise to protect us whatever they may say. – UK-citizen resident of Spain for 15 years

The talks are totally focussed on EU nationals in the UK, and UK nationals in Europe are just a tag on ‘reciprocal’ arrangement. We desperately need someone to be talking to the regional governments of Spain. – UK-citizen resident of Spain for five years

Respondents communicated a sense of powerlessness, mistrust, and scepticism. It was unclear to many who was looking out for their rights in the ongoing negotiations, which they felt were overly focussed on the future status and rights of EU citizens living in the United Kingdom. And as one respondent described it, ‘we are sparsely sown through Europe and do not have public opinion to support us. It is a matter of indifference to most Europeans’.

The responses highlighted a number of anxieties that have persisted despite the agreements reached,⁵⁶ including concerns about:

- the terms and conditions of their continued right to residency and/or migration status in their current country of residence;
- whether their personal circumstances would be sufficient to meet the requirements for legal residency or citizenship in their country of residence; and
- possibly having to return to the United Kingdom, and what this would mean for their lives (with particular questions raised by those in relationships with EU or third-country nationals regarding how UK family-reunification rules would be applied to their partners).

Further, there are questions outstanding about the degree to which UK nationals living in an EU-27 country will enjoy continued freedom of movement. This includes both those seeking to move within the European Union at some future point and those who have made lives crossing EU borders on a regular basis. Importantly, this latter group of highly mobile Britons not only include crossborder workers but also seasonal workers; Britons who move frequently within the European Union and have no habitual residence in any country; and individuals who have chosen to temporarily reside abroad for economic, family, education, or lifestyle reasons before moving on.

There are questions outstanding about the degree to which UK nationals living in an EU-27 country will enjoy continued freedom of movement.

Survey respondents and interviewees were also concerned about what Brexit will mean for their tax status, pensions, working rights, and exportable benefits—among a host of other things. Many also expressed concern for what Brexit would mean for the mobility of their dependents, such as adult children and elderly parents, who may not qualify on their own to adjust to permanent-resident status or citizenship in an EU-27 country.

Many of the UK nationals who took part in this research were well-informed and politically savvy in their analysis of what is going on. Nonetheless, a high level of misinformation and misunderstanding appeared to be in circulation among respondents. The mistrust described above might provide a partial explanation for this. However, there is a clear and ongoing lack of credible and easily comprehensible information available to the public about what these agreements will mean in practice for UK citizens living in the EU-27. The technical documents outlining what their rights will be following Brexit are both difficult to navigate for lay readers and broad in a way that fails to account for the specificities of individual lives. This dearth of information seems to have been compounded by the lack of dedicated political representation for UK citizens living overseas and uncertainty about the role of the Foreign and Commonwealth Office (which includes consular services around the world) in offering support to Britons on Brexit-related issues. In sum, respondents expressed a lack of clarity on who has been and will be responsible politically for their futures and where to turn for advice.

⁵⁶ The prompts were: (1) ‘How might these proposals affect you and your family if they become law?’; (2) ‘Do you see this agreement, if ratified, making any difference to your everyday working and personal life in the short- and long-term?’; and (3) ‘Are you reassured by the government’s statement that health care, pensions, and benefits won’t be affected? If not, what worries you specifically?’

III. SYSTEMS FOR APPROVING LEGAL STATUS

Thus far, the negotiations have focussed on what statuses UK nationals living in the EU-27 may have going forward but have been relatively silent on how this transition will happen. It remains to be seen whether UK nationals will be required to apply for a new status in EU Member States or whether this status adjustment will be automatic. The draft withdrawal agreement clarifies that Member States will not be required to introduce a system, while also offering guidelines for those that wish to do so. In countries where systems for registering resident EU nationals are either nonexistent or underused, UK nationals wishing to adjust their status after Brexit may find it harder to prove when they entered the country; in such situations, there is a stronger case to be made for introducing a new regularisation system that would make clear who has a legal right to residence and facilitate UK nationals' transition from EU citizen to the agreed upon post-Brexit status. At the same time, introducing such a system in countries that lack municipal registration systems will likely be a challenge, especially when faced with the task of processing a large number of individuals simultaneously and with no easy way to verify their arrival date.⁵⁷

A. Existing registration and permanent residence systems

Currently, UK nationals have a number of pathways to prove legal residence in the EU-27: registration, a residence permit, permanent residence, and citizenship. These differ in terms of the level and types of documentation required, as well as the rights granted to holders of these statuses (see Table 1).

Table 1. Existing pathways to prove legal residence for UK nationals living in the EU-27

Pathway to secure residence	Documentary evidence required	Legal implications	Member State example
Registration <i>(May be required after three months of residence in a Member State, according to the Free Movement Directive)</i>	In addition to proof of identity, EU migrants must supply evidence based on their economic status. <ul style="list-style-type: none"> ▪ Employees: certificate of employment or confirmation of recruitment from employer ▪ Self-employed: proof of status as self-employed ▪ Pensioners: proof of comprehensive health insurance and sufficient resources ▪ Students: proof of enrolment at an approved educational establishment and comprehensive health insurance; declaration of sufficient resources 	<ul style="list-style-type: none"> ▪ Ability to vote in local and European elections ▪ Access to income-related benefits and other forms of social assistance, in some cases subject to proof of habitual and salary contributions ▪ Access to health care in the host country (for the economically inactive, costs are borne by the EU migrant's home state) 	In Spain, EU migrants are required to register in person at their province's Office of Foreign Nationals or at a designated police station. They must also register on the <i>padrón</i> , a record kept by the local town hall, by showing official identification, a residence certificate / card, recent utility bill, and home property deeds or copy of a rental contract.

⁵⁷ For instance, interviewees in the Netherlands described the country as being in a favourable position relative to other Member States because of the high volume of people registered. MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs; MPI Europe interview with Sharon Mullen and Gladys Tuur.

Table 1. Existing pathways to prove legal residence for UK nationals living in the EU-27 (cont.)

Pathway to secure residence	Documentary evidence required	Legal implications	Member State example
Residence Permit <i>(May be available to EU migrants registered in a Member State, if provided for under national laws)</i>	<ul style="list-style-type: none"> Evidence of registration Photographs 	Same as registration	In Belgium, a foreign-born person who is registered can order an electronic identity or resident card for 25 euros that is valid for five years. The electronic card enables holders to access some government services online.
Permanent Residence <i>(According to the Free Movement Directive, an EU citizen is entitled to permanent residence after five consecutive years of legal residence, shorter in some instances.)</i>	Depending on their economic situation, documentary evidence could include: <ul style="list-style-type: none"> a valid registration certificate issued after arrival in the host country proof of living in the country, such as utility bills and rental contracts; and proof of work, study, or job-seeking, such as payslips, bank statements, and tax returns. 	<ul style="list-style-type: none"> Permanent and unconditional right of residence Automatic renewal of permanent-residence documents, as long as the holder does not live outside the country for more than two consecutive years Access to most services and benefits on par with citizens Health-care costs borne by the host state 	In the Netherlands, EU citizens and their family members can prove five years of continuous lawful residency through evidence of employment, health insurance, or a bank account linked to an address in the country. Applicants must also be registered in their locality, and additional documentation is required for those who are retired, permanently unfit for work, or crossborder workers.
Citizenship <i>(EU nationals may be eligible based on ancestry, birth in the country, marriage, or length of residence, subject to national laws.)</i>	Evidence requirements vary across Member States. In addition to identification documents, they can include: <ul style="list-style-type: none"> evidence of a certain number of years of residence; proof of marriage to a citizen; proof of birth in the country; proof of studies in the country; proof of no criminal record; photographs; and evidence of language proficiency and/or cultural knowledge. 	<ul style="list-style-type: none"> Permanent and unconditional rights of residence, regardless of time spent outside the country Full access to benefits and services Health-care costs borne by the host state Ability to obtain the right to vote in national elections 	Ireland has welcoming citizenship rules for persons with Irish heritage. Someone with at least one grandparent who was born in Ireland and held Irish citizenship can become an Irish citizen even if neither parent was born in Ireland. It has been estimated that 6.7 million people in the United Kingdom who do not already have Irish citizenship could be entitled to it.

Sources: 'Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the Right of Citizens of the Union and their Family Members to Move and Reside Freely within the Territory of the Member States Amending Regulation (EEC) No 1612/68 and Repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC, and 93/96/EEC', *Official Journal of the European Communities* L 158/77, 30 April 2004, <http://eur-lex.europa.eu/eli/dir/2004/38/oj/eng>; City of Brussels, 'Member of the European Union (EU), Members of the European Economic Area (EEA), and Swiss Subjects', accessed 14 March 2018, www.brussels.be/member-european-union-eu-members-european-economic-area-eea-and-swiss-subjects; UK Foreign and Commonwealth Office, 'Residency Requirements in Spain', updated 21 March 2018, www.gov.uk/guidance/residency-requirements-in-spain; Eva-Maria Poptcheva, *Freedom of Movement and Residence of EU Citizens: Access to Social Benefits* (Brussels: European Parliamentary Research Service, 2014), [www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140808/LDM_BRI\(2014\)140808_REV1_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140808/LDM_BRI(2014)140808_REV1_EN.pdf); Cypriot Ministry of Interior, Civil Registry and Migration Department, 'Civil Registry Section', accessed 6 March 2018, www.moi.gov.cy/moi/CRMD/crmd.nsf/All/F03BEB8DF3591BC1C2257D2C00453383?OpenDocument; Citizens Information, 'Irish Citizenship through Birth or Descent', updated 9 May 2017, www.citizensinformation.ie/en/moving_country/irish_citizenship/irish_citizenship_through_birth_or_descent.html; Simon Maybin, 'How Many Britons Are Entitled to an Irish Passport?', BBC News, 2 September 2016, www.bbc.com/news/magazine-37246769.

1. Registration and proving legal residence

One of the most straightforward ways for UK nationals to prove legal residence is through registration with a host-country municipality. Since registration is common practice in many Member States, existing systems provide the obvious foundation of any post-Brexit system for proving UK nationals' length of residence. Much of the debate about the reciprocal requirements in the United Kingdom for EU nationals has focussed on the *absence* of a registration system in the country. However, even within the EU-27 there is a huge amount of variation in registration systems and practices.

For instance, almost all UK nationals in the Netherlands are believed to be registered with their local municipality because all residents are legally required to register and there are clear incentives to do so (including being able to open a bank account, be paid for work, and visit a doctor).⁵⁸ By contrast, France does not have a municipal registration system, and while EU nationals can ask for an optional residence permit, not many do and some may even be discouraged from doing so.⁵⁹ One official in France described how registration of either French or foreign residents is not in the 'administrative culture' of the country, and that the only people inclined to register are jobseekers who want to be able to provide potential employers with a residence permit.⁶⁰ Among the remaining EU-27, only Ireland entirely lacks a registration system, but its commitment to maintaining the Common Travel Area that provides for free movement between it and the United Kingdom⁶¹ will likely mean that in practice only a British passport will be needed to access employment, services, and housing in the country.⁶²

In countries where UK nationals frequently do not register in their municipality, this under-registration can often be traced back to a number of common issues:

- **Seasonal movement.** People who live in a country for only part of the year may not see themselves as full members of the community. A diplomatic official in Cyprus also described there being a prevailing belief that registration means relinquishing one's rights to be in the United Kingdom; people who come and go between residences in more than one country (known as 'swallows') and those with certain tax situations may prefer to remain on record as domiciled in the United Kingdom.⁶³
- **Lack of comprehensive sickness insurance.** Member States are entitled to impose additional checks on people's legal residence before letting them register. The Member State may check that they are in work, actively seeking work, or—if economically inactive—self-sufficient and hold comprehensive health insurance. For instance, early retirees who are ineligible for state pension and therefore do not

58 MPI Europe interview with Sharon Mullen and Gladys Tuur.

59 MPI Europe interview with French government officials; MPI Europe interview with Christopher Chantry, Chairman, British Community Committee of France, Steering Committee, British in Europe, 13 December 2017.

60 MPI Europe interview with French government officials.

61 The Common Travel Area (CTA) is an arrangement between Ireland and the United Kingdom that long predates the European Union. It enables British and Irish citizens to travel freely between the countries, both of which are outside of the Schengen area. Under the CTA, UK and Irish nationals have broadly reciprocal rights on freedom to reside, work, access services, and recognise qualifications. See Irish Department of Foreign Affairs and Trade, 'Common Travel Area, Information Note from Ireland to the Article 50 Working Group', accessed 12 March 2018, <https://merrionstreet.ie/Brexit/Info%20Note%20CTA%20FINAL.docx>.

62 MPI Europe interview with representative of Irish diplomatic staff.

63 MPI Europe interview with Christina Smith, Vice Consul, Consular Section, British High Commission, Nicosia, Cyprus, 10 November 2017.

have access to an S1 Form⁶⁴ are required to show they have private health insurance before registering in Spain or Cyprus.⁶⁵

- **Barriers to proving legal residence.** Sweden requires people registering for a personal identity number (*personnummer*) to show they have an employment contract that lasts a year or more—a requirement that can make it impossible for people on short-term contracts or out of work to register. Such barriers to registration can put people in a Catch-22 situation: without a *personnummer* they may be unable to secure a housing contract, job, or mobile phone, items without which they cannot furnish the required evidence for a *personnummer*.⁶⁶ While this has attracted controversy at the EU level, the issue has not been resolved, and one UK official in the country commented that it had the potential to cause considerable difficulties down the line when implementing a deal on citizens’ rights.⁶⁷
- **Slow procedures and red tape.** In some Member State registration systems, applicants must have their documents translated before submitting them. While some countries accept documents in English—a boon for UK nationals—others require translation into one of the country’s official languages, a step that can impose additional costs. Third-country-national family members of EU citizens who come from non-English-speaking countries are unlikely to have documents in an accepted language, so often face such costs. The requirement that applicants register in person may also be a barrier for some people, especially those who live in rural areas or municipalities that lack translation services.

Registration may be increasing among UK nationals, as they realise they may be called upon later to prove when they entered the country. In 2016, only 10,296 UK citizens had a *titre de séjour* (residence permit) in France.⁶⁸ In the wake of the Brexit referendum, however, the number of applications for one have skyrocketed, increasing 598 per cent between 2015 and 2016, and approximately 229 per cent between 2016 and 2017. While just 189 UK citizens obtained a first-time residence permit in all of 2015, 1,319 Britons obtained one in 2016, and a further 1,852 did so in the first eight months of 2017, according to provisional figures. The biggest increases in first-time residence permits between 2015 and 2016 were for permanent-residence permits (an increase of 1,013 per cent), followed by those for non-economic activity (677 per cent) and family members (450 per cent).⁶⁹ Similarly, diplomatic officials in Cyprus explained that they were encouraging UK nationals to register as a strategy for securing status after Brexit.⁷⁰

Yet with little clarity on what future systems for adjusting the status of UK nationals will look like, it is unclear how and whether these systems will be able to use municipal registration data, even in countries with built-out and well-used systems.⁷¹

64 The S1 form is the certificate that enables certain EU nationals who live in another Member States where they are not insured (e.g. posted workers, frontier workers, and pensioners) to receive health care in that country, with their home country later reimbursing the host country.

65 In Spain, an official at the UK Consulate estimated that approximately 10 per cent of British residents were unregistered (although this may be a conservative figure), with ‘tens of thousands at least who are completely under the radar’. MPI Europe interview with representative of British consular network, Spain, 22 September 2017; MPI Europe interview with Christina Smith. See also Kelly Hall and Irene Hardill, ‘Retirement Migration, the “Other” Story: Caring for Frail Elderly British Citizens in Spain’, *Ageing & Society* 36, no. 3 (March 2016): 562–85, www.cambridge.org/core/journals/ageing-and-society/article/retirement-migration-the-other-story-caring-for-frail-elderly-british-citizens-in-spain/5EB5A223D49C0DA885184A42559926C3.

66 One official described how ‘formally speaking, there is no formal requirement for a *personnummer*, you just need one in practice as it’s used for the sole identification for banking etc., so it’s practically difficult to exist without one.’ MPI Europe interview with Aidan Liddle. The EU Rights Clinic has complained to the European Commission about this point. See European Citizen Action Service, ‘EU Rights Clinic Refers Sweden to Commission for Breach of Free Movement Rules’ (news release, 14 November 2017), <http://ecas.org/free-movement-sweden-complaint/>. The SOLVIT service recommend that EU nationals register as jobseekers so they can receive a coordination number, which may be accepted by employers at least temporarily. MPI Europe interview with representatives of SOLVIT Sweden.

67 MPI Europe interview with Aidan Liddle.

68 MPI Europe interview with French government officials.

69 Ibid.

70 MPI Europe interview with Christina Smith.

71 MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs.

2. Permanent residence

Permanent-residence status offers UK nationals living abroad in the EU-27 more security and more rights. After five years of living in another Member State, EU citizens automatically acquire the right of permanent residence and are entitled to apply for a permanent-residence document (although they do not need to). After hitting this five-year mark, conditions that might otherwise apply to legal residence fall away (such as the requirement to be in or actively seeking work, or economically self-sufficient). EU nationals only lose the right to permanent residence if they subsequently live outside the country for more than two consecutive years.⁷²

Like registration and residence-permit systems, procedures for applying for permanent residence vary widely. Fees range from nothing (e.g., in France and Ireland) to 180 euros (in Finland).⁷³ In most cases, applicants are required to attend an in-person interview (sometimes in addition to applying online).

Documentary requirements also vary. Generally, mobile EU citizens are required to show proof of continuous legal residence, meaning they have to show they have been exercising their treaty rights by being in work, studying, actively seeking work, being unable to work because of injury, or being financially self-sufficient. In some cases, the documentary requirements are arduous; France, for example, requires one piece of evidence of legal status for each six-month period of residence (which adds up to a minimum of ten pieces for five years of continuous residence). Several countries also require evidence of continuous sickness insurance for students, retirees, and other economically inactive residents.⁷⁴ This particular requirement is one of the main reasons EU nationals living in the United Kingdom have been turned down for permanent residence, a topic of some controversy in the negotiations.⁷⁵

Like registration and residence-permit systems, procedures for applying for permanent residence vary widely.

In some countries, such as France, where it is uncommon for EU migrants to request a permanent-residence card, there have been reports of misunderstandings and delays.⁷⁶ For example, in the French department of Gironde, some British citizens who applied for permanent-residence cards have been asked by officials to wait to apply until after Brexit, ‘when they are no longer EU citizens and therefore need a *carte de séjour*’.⁷⁷

Thus, while permanent residence is an appealing pathway for UK nationals looking to secure their status before Brexit, the bureaucratic challenges involved may make this difficult. Such hurdles also foreshadow obstacles that may arise when Member States introduce systems to regularise the status of large numbers of UK nationals.

72 European Commission, ‘Permanent Residence (>5 Years) for EU Nationals’, updated 22 December 2017, https://europa.eu/youreurope/citizens/residence/documents-formalities/eu-nationals-permanent-residence/index_en.htm.

73 Finnish Immigration Service, ‘Application for a Permanent Residence Permit’, accessed 9 March 2018, <http://migri.fi/en/application-for-a-permanent-residence-permit>.

74 Kuba Jablonowski and Anne-Laure Donskoy, ‘Written Evidence Submitted by The3Million (OBJ0148)’, UK Parliament, January 2017, <http://data.parliament.uk/WrittenEvidence/CommitteeEvidence.svc/EvidenceDocument/Exiting%20the%20European%20Union/The%20UK%E2%80%99s%20negotiating%20objectives%20for%20its%20withdrawal%20from%20the%20EU/written/46718.html>.

75 University of Oxford, Migration Observatory, *Here Today, Gone Tomorrow? The Status of EU Citizens Already Living in the UK* (Oxford: University of Oxford, Migration Observatory, 2016), www.migrationobservatory.ox.ac.uk/wp-content/uploads/2016/08/commentary-status_EU_citizens.pdf.

76 For example, one reporter—a British national with more than ten years of residence in France—documented at least seven visits to the prefecture, several calls to an advice line, and a complaint lodged with EU’s SOLVIT service before obtaining a permanent-residence card more than one year after making the initial application. See the Connexion, ‘Diary of a Carte de Séjour Applicant’, the Connexion, 25 October 2017, www.connexionfrance.com/French-news/Brexit/Diary-of-a-carte-de-sejour-applicant.

77 Ben McPartland, ‘Brits Seeking Permanent Residency in France Told “Come Back after Brexit”’, The Local.fr, 21 November 2017, www.thelocal.fr/20171121/brits-seeking-residency-permits-in-france-told-to-come-back-after-brexit.

3. Citizenship

Citizenship is the ‘gold standard’ among the pathways to secure status for UK nationals living in the EU-27. It has played both an instrumental and symbolic role following the Brexit referendum (see Box 1).⁷⁸

Box 1. Views on naturalisation among UK nationals in the EU-27

The decision to apply to become a citizen of another country is often highly personal. For some UK nationals living abroad in the European Union, acquiring the citizenship of their country of residence represents a way to ensure their right to stay. For others, it is more closely tied to a sense of political connection and social commitment. The following views, voiced in interviews by UK citizens living in France, reflect some of the wide range of political, family, and personal factors that feed into such decisions:

That would make me feel much more secure, that will make me feel that, I don't know, part of the club again... It certainly will make me feel I'm not going to be thrown out. I think the bottom line [is] that, isn't it? – English-as-a-foreign-language teacher, resident in France for more than ten years

I was born into a political family so I feel that voting is a right and an obligation, and I don't vote because I haven't got round to getting my nationality. So it's to do with that as well, but it's to do with having children that are in France, that go to school in France, and me having to have my say and not being able to have my say ... in this country. So now I'm getting my nationality sorted and I will vote in France and I will register and I will vote for the next presidential election. – Solicitor, resident in France for 30 years

I think a lot of people who are doing it are doing it for security. People who are certainly older than us can't bear the thought of having to go back and start again when you're in your late 70s, so for a lot of people and for us it's security. But also, it does give us an opportunity to really show that we're committed to France and that we want to be French citizens. – Retired civil servant, resident in France for five years

Source: Interviews conducted by Michaela Benson with UK citizens living in France, 2017–18.

While length of residence in a Member State provides the main route to citizenship, UK nationals may also be able to acquire citizenship through marriage or heritage.⁷⁹ Data indicate that the proportion of UK nationals eligible for citizenship—at least based on length of residence—is fairly high; in Germany, more than two-thirds of British residents had been in the country for more than eight years, the minimum required to naturalise.⁸⁰ One German official even questioned whether there will be any British nationals

⁷⁸ Benson, *What Does Brexit Mean for British Citizens Living in the EU-27? Talking Brexit with the British in Rural France*.

⁷⁹ In Germany, one of the only countries with available data on this question, more than one-third of UK nationals is married to a German, giving them a prime facie entitlement to citizenship. See German Federal Statistical Office, ‘Foreign Population by Marital Status and Selected Citizeships’, updated 31 December 2016, www.destatis.de/EN/FactsFigures/SocietyState/Population/MigrationIntegration/Tables_ForeignPopulation/ForeignerMaritalStatus.html. Some British nationals who live in Cyprus have Cypriot heritage, meaning they could get citizenship through their parents. MPI Europe interview with Christina Smith.

⁸⁰ Data from the German Federal Statistical Office also reveal that only 3.9 per cent of the ‘naturalisation potential’ has been utilised (i.e., the share of the eligible UK-national population to acquire citizenship). See German Federal Statistical Office, ‘Naturalisation by Former Citizenship’, accessed 29 March 2018, www.destatis.de/EN/FactsFigures/SocietyState/Population/MigrationIntegration/Tables_Naturalisations/NaturalisationsFormerCitizenship.html. See also German Federal Statistical Office, ‘Naturalisations, 2016, by Duration of Stay and Selected Former Citizenship’, accessed 20 February 2018, www.destatis.de/EN/FactsFigures/SocietyState/Population/MigrationIntegration/Tables_Naturalisations/DurationStaySelectedFormerCitizenships.html.

left in Germany by the time Brexit finally occurs, given signs of a recent trend of Britons obtaining dual nationality or relinquishing their British citizenship in favour of German citizenship.⁸¹

A number of other EU countries have also seen an uptick in naturalisation among UK citizens. However, this builds off a very low baseline, and the total number of naturalisations has generally remained low.⁸² From 2015 to 2016, citizenship acquisition rates more than quadrupled in Germany (from 594 to 2,702), more than tripled in the Netherlands (from 163 to 640), and more than doubled in Sweden (from 453 to 978), but they remained in the tens in Spain, where dual nationality is not allowed for UK citizens.⁸³ While these numbers are small relative to both those for applicants of other nationalities and to the size of the UK-citizen population in many Member States, waiting times and a lag in the release of official data mean that the full scale of British naturalisation in the wake of the Brexit referendum to be seen. Most countries have not yet published data for 2017, which could show a different picture. Many experts interviewed for this study reported anecdotally observing a large boost.⁸⁴

Barriers to acquiring citizenship

One of the main barriers to citizenship—and something that has already surfaced in debates about Brexit—is the rules some Member States have regarding dual citizenship. As mentioned, Spain does not currently recognise dual Spanish and UK citizenship (it permits dual citizenship for only a very limited number of nationalities⁸⁵), meaning that Britons living in Spain who wish to apply for Spanish nationality must renounce their UK citizenship. Where this is the case, it could have wide-reaching effects on public life. British nationals, as EU citizens, have stood for election in some areas, and can be a powerful voting bloc in towns with large British communities.⁸⁶ Loss of EU citizenship might weaken UK citizens' political participation unless they become citizens of their country of residence (or another EU Member State), and it could change the demos of some localities if UK nationals are no longer eligible to vote in local elections. Similarly, Germany allows EU nationals to naturalise without giving up their previous citizenship, but it is unclear whether this will continue to apply to UK nationals after Brexit.⁸⁷

It is currently unclear whether UK nationals will be allowed to hold dual British-Dutch nationality after Brexit. The Netherlands does not allow dual citizenship except under exceptional circumstances, such as for persons who were born in the Netherlands and also live there, those who are the spouse or registered partner of a Dutch citizen, or asylum seekers who hold residence permits.⁸⁸ However, there is precedents for some amount of flexibility within the Dutch ban on dual nationalities; exemptions have been made for citizens from countries that do not permit the renunciation of nationality, including for Iranians and Moroccans.⁸⁹ The junior coalition partner, Democrats 66 (or D66), has been very critical of dual-citizenship restrictions, and in October 2017, the

81 MPI Europe interview with Erkan Ertan.

82 Benton, *Safe or Sorry?*

83 Eurostat, 'Acquisition of Citizenship by Age Group, Sex and Former Citizenship [migr_acq]', updated 15 April 2018, http://ec.europa.eu/eurostat/web/products-datasets/-/migr_acq.

84 These top-level figures may mask considerable regional variation (and a more recent bump). For instance, an advisor from the Senate Chancellery of Berlin felt that there was a trend of UK nationals becoming dual or sole-German citizens and pointed out that the figures have doubled/tripled within the city of Berlin. MPI Europe interview with Erkan Ertan.

85 In Spain, naturalised citizens are only permitted to retain their other citizenship if it is of an Ibero-American country, Andorra, the Philippines, Equatorial Guinea, or Portugal. See Spanish Ministry of Justice, 'Tener la doble nacionalidad', updated 18 August 2015, www.mjusticia.gob.es/cs/Satellite/es/1215198282690/EstructuraOrganica.html.

86 MPI Europe interview with Pol Morillas, Deputy Director and Senior Research Fellow in European Affairs, Barcelona Centre for International Affairs, 20 September 2017; Giles Tremlett, 'The Spanish Towns Where British Expats Hold Key to Electoral Victory', *The Guardian*, 20 May 2011, www.theguardian.com/world/2011/may/20/spain-expat-elections-power-british.

87 Government of Germany, *Nationality Act of 22 July 1913*, Reich Law Gazette I p. 583 - Federal Law Gazette III 102-1, as amended by the *First Act to Amend the Federal Act on Registration and Other Legislation of 11 October 2016*, Federal Law Gazette I p. 2218, Article 3.

88 Dutch Ministry of Justice and Security, Immigration and Naturalisation Service, 'Renouncing Your Current Nationality', accessed 3 April 2018, <https://ind.nl/en/Pages/Renouncing-your-current-nationality.aspx>.

89 Dutch Ministry of Justice and Security, Immigration and Naturalisation Service, 'Landenlijst behoud nationaliteit', accessed 3 April 2018, <https://ind.nl/Paginas/Landenlijst-behoud-nationaliteit.aspx>.

Dutch government said it would allow its citizens living in the United Kingdom to take up dual nationality after Brexit.⁹⁰ One approach that may be floated in the Netherlands in future, according to interviewees, is the creation of an exception for UK nationals who moved to the country prior to the United Kingdom's exit from the European Union along the lines of its other exemptions.

Further barriers to acquiring citizenship can include cost, a need to prove host-country language proficiency, difficulty navigating bureaucratic processes, and financial requirements. In the Netherlands, for instance, the barriers to passing all six language and integration modules are high, and courses that improve applicants' changes are relatively expensive.⁹¹ Meanwhile, in Sweden, only about one-quarter of submitted applications are processed on the first try, with others turned back as incomplete, suggesting that the process is difficult to navigate.⁹² And in Germany, interviewees described some British residents and families struggling to pay the 255-euro per person fee or to pass the German language test, which requires considerable knowledge of the legal and social system and living conditions in Germany as well as B1-level knowledge of German.⁹³

Many of these challenges are likely to be even more complicated for mixed-status families.

Should these barriers prove onerous or insurmountable, they may hinder the post-Brexit integration of Britons into Member State societies. Many of these challenges are likely to be even more complicated for mixed-status families, in which members may collectively need to weigh the costs and benefits of having citizenship of the United Kingdom or of another Member State. Member States that wish to promote citizenship as an integration tool may wish to revisit their naturalisation rules.

B. Future systems for proving legal residence

The draft withdrawal agreement contains additional information on post-Brexit documentary requirements to prove legal residence, the timeframe for making applications, and appeals systems. It also clarifies that EU citizens who arrive in the United Kingdom and UK citizens who arrive in other Member States during the transition period will have the right to acquire permanent residence after living in the country for five years (in line with the rule for EU nationals in another Member State).⁹⁴ However, the details of future systems for proving legal residence are left to Member States. Such broad discretion means that implementation (much like existing national systems for granting residence status and citizenship) could vary considerably. More

90 Part of the coalition agreement is based on modernising the nationality law to make it possible for first-generation immigrants and emigrants to hold multiple nationalities. MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs; Daniel Boffey, 'Brexit: Dutch Nationals Living in Britain Will Be Allowed Dual Citizenship', *The Guardian*, 10 October 2017, www.theguardian.com/world/2017/oct/10/dutch-nationals-living-britain-allowed-dual-citizenship-brexit.

91 MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs.

92 Swedish Migration Agency, 'British Seeking Swedish Citizenship', updated 22 June 2017, www.migrationsverket.se/English/About-the-Migration-Agency/News-archive/News-archive-2017/2017-06-22-British-seeking-Swedish-citizenship.html.

93 To naturalise as a German citizen, an applicant must live in Germany lawfully for eight years. This can be reduced to seven or six years if the applicant has successfully completed an integration course or in the case of special integration measures. Applicants must also have adequate German-language skills, which they can prove by obtaining a B1-level certification in the 'DTZ – German Test for Immigrants'. If one of the conditions for naturalisation is not fulfilled, applicants may receive a 'discretionary naturalisation', wherein the naturalisation authority can still grant naturalisation if there is a public interest and some of the basic requirements have been fulfilled. See German Federal Office for Migration and Refugees, 'The Naturalisation Test', updated 18 January 2011, www.bamf.de/EN/Willkommen/Einbuengerung/WasEinbuengerungstest/waseinbuengerungstest-node.html; German Federal Office for Migration and Refugees, 'Naturalisation in Germany', accessed 12 March 2018, www.bamf.de/EN/Willkommen/Einbuengerung/InDeutschland/indeutschland-node.html.

94 European Commission, 'Draft Agreement on the Withdrawal of the United Kingdom'.

over, it means that countries that lack the resources to process applications quickly or that choose to make it difficult for UK nationals to adjust their status⁹⁵ are unlikely to see repercussions.⁹⁶

The withdrawal agreement also leaves it to Member States to decide whether or not to impose a system for assessing residence. While choosing not to do so would be a low-cost option and could, in practice, mean that most Britons would be allowed to stay,⁹⁷ it could also create confusion among employers, landlords, and public services if they are unsure of what their obligations to check an individual's residence status are and what kind of proof to accept. Moreover, UK citizens who want to have unequivocal reassurance that their status is secure may be unhappy if they are unable to receive official documentation that they can present as proof. While the latest draft withdrawal agreement goes some way to addressing this issue by requiring Member States that choose not to implement a new status-assessment system to nonetheless issue residence documents to those who request it (and are eligible), the details of how this could work in practice remain very vague.

The central question in the coming months will be whether further details on the systems that will facilitate UK nationals' transition between legal statuses will be enshrined in the withdrawal agreement and EU law or left to national discretion. Assuming the text on citizens' rights in the draft withdrawal agreement remains the same, the following questions may arise:

- ***What criteria should applicants have to fulfil to qualify for residence and permanent residence?*** According to the draft withdrawal agreement, those in possession of proof of permanent residence should be able to convert this to a new, post-Brexit status (whatever it may be) free of charge and without having to complete another application process. The question of proof thus arises for those who will by the end of the transition period have resided in the Member State for five years or more yet have not applied for proof of permanent residence, and for those who will have lived there for fewer than five years (see Box 2). For individuals in the latter situation, the draft withdrawal agreement implies that an assessment should be made about whether someone qualifies for legal residence (i.e., is in work or self-sufficient) only at the time the application is filed, rather than requiring people to prove their entry date or document their eligibility during the entirety of their period of residence. However, Member States will have to define legal residence for different groups; this could mean mere evidence of an employment contract, or it could mean documentation of one's work history for three months or more. For permanent-residence applicants, the agreement allows Member States to require evidence of continuous legal residence (e.g., proof that they had been exercising their free movement rights for their whole period of residence), which could include proof of comprehensive health insurance for economically inactive residents.⁹⁸ Finally, if countries decide to impose more

95 This may be the case if, for instance, they are concerned about the future costs of large numbers of UK nationals becoming permanent residents (e.g., if a significant share are pensioners who have high health-care costs that would no longer be eligible for reimbursement by the United Kingdom through the S1 scheme).

96 The Commission has several options for dealing with noncompliance among Member States, the first of which is an infringement procedure, through which the Commission can refer incidences of noncompliance to the European Court of Justice. However, many infringement procedures remain open and unresolved, and in practice it is a lengthy and rare procedure to get to the point at which sanctions are imposed. See European Commission, *Monitoring the Application of European Union Law 2016 Annual Report* (Brussels: European Commission, 2017), <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=COM%3A2017%3A370%3AFIN&from=EN>.

97 British in Europe, one of the main interest groups that lobbies on behalf of UK nationals in the European Union, is against a 'conditional application system' such as this because, compared to the current declaratory system, it could create additional risk of being turned down. See British in Europe, 'Analysis of Draft Withdrawal Agreement Published by the Commission on 28 February 2018' (working document, British in Europe, n.p., 6 March 2018), https://britishineurope.org/wp-content/uploads/2018/03/18-03-06_Review-of-draft-WA_FINAL.pdf.

98 While the United Kingdom has committed to asking EU-national applicants for permanent residence only for an identity document, recent photograph, and declaration of any criminal convictions (instead of proof of comprehensive health insurance, for instance), other Member States have made no such commitments. Moreover, in an effort to make the application process as streamlined as possible, the United Kingdom has said it will use employment records to determine applicants' UK work history instead of requesting documentary proof of employment. See UK Home Office, UK Visas and Immigration, and UK Department for Exiting the European Union, 'Guidance - Status of EU Citizens in the UK: What You Need to Know', updated 16 March 2018, www.gov.uk/guidance/status-of-eu-nationals-in-the-uk-what-you-need-to-know.

stringent checks on legal residence, those with a large informal economy (such as Spain) could end up rejecting a large volume of applications.⁹⁹

Box 2. From seasonal workers to ‘swallows’: Vulnerable groups in holiday destinations

Some of the Britons who that stand to lose out from Brexit are those who spend only part of their time in an EU-27 country, either because they work in seasonal occupations (e.g., in the tourist industry) or because they have retired and split their time between the United Kingdom and a Member State. These groups are thought to be systematically under-registered in local municipalities, and they may struggle to prove continuous legal residence—especially if they have spent periods of more than six months in a year outside the Member State.

Geographically concentrated populations of older Britons are likely to be among the most vulnerable. Though only limited data exist, it is likely that under-registration is a more pronounced issue among pensioners compared to other groups; in many cases, they have fewer incentives to register (e.g., they do not need to make social-security contributions, unlike economically active foreign-born residents in Spain, for instance). According to the 2011 census, more than 64 per cent of British citizens in Cyprus are over the age of 50. Early retirees may choose not to register in order to retain the right to access the UK National Health Service. Yet this failure to register may have consequences down the road. British nationals currently enjoy the same rights to own property in Cyprus as Cypriot nationals, and many do. Third-country nationals, on the other hand, face greater restrictions, such as a requirement that they obtain prior permission to own property from the Council of Ministers, permission that is generally only granted for one property. Should British property owners become subject to these stricter requirements after Brexit, many (and especially those who are unregistered) may struggle to prove their legal ownership, which could open them up to costly paperwork or litigation.

Young people may also be disproportionately affected, particularly those who have moved around in search of seasonal work in different regions or countries or been employed in the informal economy. They may struggle to document their legal residence, especially if they are called on to produce proof of employment history and/or are currently between jobs.

Source: MPI Europe interview with Linda Leblanc, Municipal Councillor, and Marinos Lambrou, Mayor, Municipality of Pegiea, Cyprus, 9 November 2017; MPI Europe interview with Christina Smith, Vice Consul, Consular Section, British High Commission, Nicosia, Cyprus, 10 November 2017; MPI Europe interview with Christopher Chantry, Chairman, British Community Committee of France, Steering Committee, British in Europe, 13 December 2017; MPI Europe interview with representative of British consular network, Spain, 22 September 2017; Carmen Juravle, et al., *A Fact Finding Analysis on the Impact on the Member States’ Social Security Systems of the Entitlements of Non-Active Intra-EU Migrants to Special Non-Contributory Cash Benefits and Healthcare Granted on the Basis of Residence* (Brussels: ICF GHK, 2013), <http://ec.europa.eu/social/BlobServlet?docId=10972>; Kelly Hall and Irene Hardill, ‘Retirement Migration, the “Other” Story: Caring for Frail Elderly British Citizens in Spain’, *Ageing & Society* 36, no. 3 (March 2016): 562–85, www.cambridge.org/core/journals/ageing-and-society/article/retirement-migration-the-other-story-caring-for-frail-elderly-british-citizens-in-spain/5EB5A223D49C0DA885184A42559926C3; Helen McCarthy, *British Pensioners in the European Union after Brexit* (Brussels: Migration Policy Institute Europe, forthcoming).

⁹⁹ Such has been the case in past regularisation schemes; for example, more than one-third of immigrants who received temporary status under the 1998 regularisation scheme in Greece and a majority of those in Italy’s 1986–94 scheme were unable to renew their status due to inability to document their work. Where this occurs, it both limits the benefits for target population and raises enforcement costs to a country. See Marc R. Rosenblum, *Immigrant Legalization in the United States and European Union: Policy Goals and Program Design* (Washington, DC: MPI, 2010), www.migrationpolicy.org/research/immigrant-legalization-united-states-and-european-union. The draft withdrawal agreement allows Member States to request proof of employment either through a confirmation letter from an employer, certificate of employment, or proof of self-employment. These forward-looking requirements—as opposed to evidence of past employment—should alleviate some of the burden on applicants to prove that they were exercising free movement rights.

- ***What types of documentary evidence should be considered valid?*** In addition to deciding what criteria applicants should be asked to meet, Member States will also need to consider which types of documents to consider proof that these have been met. A key question is how secure the documents will have to be—should they be reasonably official (e.g., tax documents, mortgage statements) or easier for applicants to obtain (e.g., letters from previous housemates or landlords)?¹⁰⁰ More stringent requirements would reduce the risk of fraud, but could shut out vulnerable groups who have a valid claim of residence but face greater difficulties documenting their entry date (in the case of permanent-residence applications), place of residence, or economic status (e.g., young people who have been moving around while working in the leisure industry or the self-employed).
- ***What system should be put in place to process applications?*** Some countries may choose to adapt existing infrastructure for municipal registration and permanent residence—a strategy that might improve compliance and reduce bottlenecks, but that could also mean these offices would be required to evaluate new applicant criteria, such as continuous legal residence (especially for new applicants for permanent residence).¹⁰¹ Yet existing permanent-residence systems are often cumbersome and lack transparency for applicants. For those who have resided in the country for fewer than five years, the main option for working within current systems lies with municipal registration systems, but there are challenges here too: in addition to excluding Britons who are not registered or faced difficulties registering, this might also wrongly include those who registered at some point and have since moved, but never deregistered).¹⁰² By contrast, the alternative—introducing new systems geared specifically toward processing applications from UK nationals affected by Brexit—could be costly, especially in places with large numbers of Britons. Countries will have to decide which institutions are best placed to handle such processes, those that deal with issues related to EU nationals or those responsible for third-country nationals. They will also have to put in place new guidance and training to help officials determine cases. A major question will be whether to transition to online systems, which are likely to have a lower cost overall, but will require higher set-up costs due to the need to create new websites and digital processes to verify the authenticity of identity documents.¹⁰³
- ***What form should proof-of-status documents take going forward?*** The physical form of the registration/residence certificate UK nationals receive as a result of this process may also matter. A common theme among the interviews conducted for this study was that the current form of the proof of residency many Member States issue is not very user friendly. In Cyprus, for instance, it is an A4 piece of paper, and some interviewees expressed a wish for a more sturdy, portable document (such as a plastic card), noting that some people currently leave their registration certificates at home when they travel for fear of losing or damaging them.¹⁰⁴ Additionally, there is a question about whether documents issued up until now to UK citizens (as EU nationals) will be accepted after Brexit.
- ***How should appeals and refusals be handled?*** Another key question is what will happen to people who don't meet the requirements to adjust their status or don't apply within the application window.

100 Participant comments during the roundtable meeting 'Beyond "Deal or No Deal"'. For a discussion of this point in the UK context, see Madeleine Sumption, *Where Will the Burden of Proof Lie for EU Citizens Demonstrating Their Rights after Brexit?* (Oxford: University of Oxford, Migration Observatory, 2017), www.migrationobservatory.ox.ac.uk/resources/reports/burden-of-proof-eu-citizens-after-brexite/.

101 Participant comments during the roundtable meeting 'Beyond "Deal or No Deal"'.
 102 The ease with which certain groups are able to register in the first place varies widely. As noted elsewhere in this report, it is difficult for people without permanent employment contracts to acquire a Swedish *personnummer*, with the result that many retirees and stay-at-home parents may have never been entered into the system. One Dutch government official explained that it might be cleaner to start from scratch and require UK nationals to register with the Immigration and Naturalisation Service. MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs.

103 For instance, the draft withdrawal agreement states that 'the identity of the applicants shall be verified through the presentation of a valid passport or national identity card for Union citizens', which suggests that original documents will need to be verified at some point in the process. Countries wishing to process applications through digital systems may need to implement new ways to verify formal documentation. See European Commission, 'European Commission Draft Withdrawal Agreement'.

104 MPI Europe interview with Christina Smith.

Criminal background checks, which could even be applied to persons who currently hold permanent residence (and are thus otherwise entitled to have their status converted to any newly created status), could also mean even long-term residents who are former offenders could be turned down for permanent residence. The question then becomes: will they be indefinitely debarred from acquiring status (even after decades of residence) or should only recent convictions be considered pertinent? Another key question is what will happen to people whose applications are denied, and whether they are required to return to the United Kingdom or implicitly tolerated. While mass deportation will not be a viable option, some countries have acknowledged that returns (currently not extensively used) might be applied more readily if Britons were third-country nationals (e.g., for those who are homeless or a public disturbance).¹⁰⁵

Officials from several Member States described having no plans to increase resources or capacity to facilitate the adjustment of UK nationals' legal statuses. In France, respondents acknowledged that previous regularisation schemes had increased demand on prefecture administrative offices, but added that this had been short lived and that there are 'not that many' Britons.¹⁰⁶ Others agreed that Brexit may create additional pressure on resources, but explained that provisions were already in place to expand processing capacity in special circumstances or as part of broader government policy.¹⁰⁷ In the Netherlands, for example, it was reported in February 2018 that the government intended to appoint 750 new customs agents, although not specifically in anticipation of processing applications from UK nationals in the country.¹⁰⁸

The European institutions, United Kingdom, and EU-27 governments will need to work together to ensure that status-adjustment processes are both inclusive and well publicised.

Although an imperfect comparison to the impending status adjustment of UK and EU nationals, previous regularisation schemes in Europe and the United States (which have generally targeted unauthorised immigrant populations) indicate that between 25 per cent and 75 per cent of eligible applicants generally apply within the set application window. For instance, in the United States, an estimated three-quarters of the unauthorised immigrants eligible for legalisation under the 1986 *Immigration Reform and Control Act* (IRCA) applied, with close to 90 per cent of applications approved.¹⁰⁹ While there is no precedent for EU nationals, one early sign that there could be low take-up of a new system is that far fewer Britons have historically applied for permanent residence than are eligible.¹¹⁰ Although the stakes are much higher now, and many more UK nationals abroad are likely to view adjusting their status as beneficial, these prior examples point to a need for very active, timely, and thoughtful outreach to potentially eligible applicants.

Given the palpable risk that any regularisation process will leave out a share of UK nationals eligible to register after Brexit, the European institutions, United Kingdom, and EU-27 governments will need to work together to ensure that status-adjustment processes are both inclusive and well publicised.

¹⁰⁵ MPI Europe interview with French government officials.

¹⁰⁶ French government officials described the number as 'peanuts' and explained that while it was a new problem they had not planned for, it paled in comparison to the number of foreigners in France, so they had no plans to hire more people to process applications. Ibid.

¹⁰⁷ For example, a representative of the German Office for Foreigners' Affairs in Cologne referred to scaling up naturalisation processing through 'special rules for appointment allocation' as a possibility (e.g., by processing applications on Saturdays). This strategy was employed in the run-up to the federal elections in 2013, processing was ramped up to enable as many people as possible to participate in the election. 'We don't know what the rules look like,' the representative acknowledged, 'but in case there are bottlenecks or the pressure increases, there will certainly be adequate ways to deal with it in Cologne.' MPI Europe interview with a representative of the Office for Foreigners' Affairs, Cologne, Germany, 20 November 2017.

¹⁰⁸ Reuters, 'UK Will Need "Thousands" More Customs Officers after Brexit, Dutch MP Warns', *The Guardian*, 17 February 2018, www.theguardian.com/politics/2018/feb/17/brexit-uk-thousands-customs-netherlands.

¹⁰⁹ Muzaffar Chishti and Charles Kamasaki, *IRCA in Retrospect: Guideposts for Today's Immigration Reform* (Washington, DC: MPI, 2014), www.migrationpolicy.org/research/irca-retrospect-immigration-reform.

¹¹⁰ Sumption, *Where Will the Burden of Proof Lie for EU Citizens*.

IV. OTHER POLICY CONSIDERATIONS

While political progress has been made on the core aspects of citizens' rights, as described above, interest groups have expressed their dissatisfaction with outstanding elements of a deal. Even if these are addressed—and especially if they are not—Member State policymakers are likely to encounter several policy challenges in the run-up to Brexit and in the transitional and implementation periods. At the same time, positive side effects of Brexit could include British populations reaffirming and strengthening their connections to the Member State societies in which they live, including by investing in becoming citizens or improving their host-country language proficiency. Key considerations include:

- **Family unification.** Brexit may exacerbate some existing challenges, such as those related to the entry and residence of third-country-national family members and same-sex couples (e.g., requests for excessive documentation, fees, and unfounded visa refusals). Questions also remain about what rules will be applied to mixed-status families returning to the United Kingdom, and to the reunification rights of Britons who move to the EU-27 after Brexit.
- **Access to benefits and services.** For British retirees who often already face difficulties accessing social care and have been hard hit by a declining value of the pound, Brexit may further diminish their care options and make them more reliant on informal social networks for support; at the same time, they may lose access to some family members who could previously visit under free movement.
- **Political participation and integration.** As EU citizens, UK nationals currently have some political rights in other EU countries that they will likely lose following Brexit, including the right to vote in local elections. But there may also be renewed interest in citizenship acquisition as well as opportunities to encourage language learning and foster social cohesion as UK-national populations become more settled.
- **Onward movement.** Many mobile UK families rely on being able to live and work across several Member States, and on the right to provide crossborder services. While frontier workers (persons who live in one country and work in another) are protected by the draft withdrawal agreement, many of those in nontraditional employment situations (such as short-term contracts in multiple countries) will be deeply affected by the loss of onward free movement rights.
- **Advice.** Advice systems have struggled to adapt to the fast-changing nature of Brexit negotiations, leading to considerable confusion, especially at the local level. To regain the trust of their British residents, Member States will need to harmonise and simplify the advice they are offering instead of relying on out-of-date statements about how nothing has changed.

Underpinning many of these issues is the fact that the status of UK nationals living in the European Union will be affected by the future of the EU-UK relationship in its entirety, not just the deal on citizens' rights.

A. Family unification

In many ways, the draft withdrawal agreement is generous regarding the rights of families to live together. Everyone who meets the definition of a 'family member' as set out in the Free Movement Directive (i.e., spouses, partners, and dependent children, grandchildren, parents, and grandparents) and who is living outside of the host Member State on the date the United Kingdom leaves the Union will be covered by the latest draft

withdrawal agreement.¹¹¹ This includes future spouses and partners, who were excluded in the December joint report. However, there are still some gaps. While relatives who fall into the ‘other family members’ category (e.g., adult dependents) and who have applied for residence before the end of the transition will be allowed to stay, there are no guarantees for those who apply after Brexit. Moreover, the draft agreement may not protect all third-country-national carers; the text suggests that third-country nationals who care for a child who has exercised their free movement rights will be covered, but those who care for a child born in the host Member State will not.¹¹²

Certain families, such as those with third-country-national members, same-sex partners, adult dependents, split families, and unregistered partners, already face challenges in exercising their rights to entry, residence, and access to the labour market. Brexit could exacerbate these issues.¹¹³ For example, while 13 Member States allow same-sex marriage, six do not even allow registered or civil partnerships for same-sex couples—however, the question of whether same-sex spouses must be recognised in all Member States for the purpose of free movement is currently before the European Court of Justice.¹¹⁴ EU law has a stipulation for recognising unregistered partners in committed relationships, and the draft withdrawal agreement sets out that countries will allow family unification if the relationship predates the United Kingdom’s exit from the European Union and continues to be ‘durable’ when the partner seeks residence. However, defining what makes a relationship ‘durable’ is left to individual Member States; while guidance from the UK Home Office includes a long list of possible evidence (e.g., joint responsibility for children, photos, and evidence of joint finances),¹¹⁵ some Member States (such as France and Sweden) require evidence of cohabitation, which disadvantages long-distance partners seeking to reunite.¹¹⁶ These restrictions could take on new importance after Brexit.

Certain families ... already face challenges in exercising their rights to entry, residence, and access to the labour market.

At the same time, however, these families may find it difficult to return to the United Kingdom, which also imposes an income requirement on UK nationals seeking to bring third-country-national partners into the country. Currently, these stricter national requirements are waived for UK nationals who have exercised free movement; in such cases, UK nationals who reunite with third-country-national family members while

- 111 Article 2 of the Free Movement Directive includes the right of EU citizens to be joined or accompanied by their spouses, registered partners, and dependent children, grandchildren, parents, and grandparents (including those of their spouse or partner). Member States are also required, per Article 3, to ‘facilitate entry and residence’ of any other family members who ‘are dependents or members of the household of the Union citizen ... or where [the family member’s] serious health grounds require the personal care of the EU citizen.’ See ‘Directive 2004/38/EC’.
- 112 UK House of Commons Library, ‘Brexit: The Draft Withdrawal Agreement’ (briefing paper no. 8269, UK House of Commons Library, London, 23 March 2019), <http://researchbriefings.files.parliament.uk/documents/CBP-8269/CBP-8269.pdf>.
- 113 These obstacles include demands for excessive documentation, extreme delays in the issuance of visas or residence cards, fees, and unjustified refusals. Moreover, same-sex partners face challenges in Member States such as Poland and Slovakia, where same-sex partnerships are not recognised in the context of free movement. See European Parliament, Directorate-General for Internal Policies, *Obstacles to the Right of Free Movement and Residence for EU Citizens and Their Families: Comparative Analysis* (Brussels: European Union, 2016), [www.europarl.europa.eu/RegData/etudes/STUD/2016/571375/IPOL_STU\(2016\)571375_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2016/571375/IPOL_STU(2016)571375_EN.pdf); Aliyyah Ahad, *British Families in the European Union after Brexit* (Brussels: Migration Policy Institute Europe, forthcoming).
- 114 Same-sex marriage is allowed in Belgium, Denmark, Finland, France, Germany, Great Britain (but not Northern Ireland), Ireland, Luxembourg, Malta, the Netherlands, Portugal, Spain, and Sweden. There is no legal recognition for same-sex partners in Bulgaria, Latvia, Lithuania, Poland, Romania, and Slovakia. See European Parliamentary Research Service, ‘The Rights of LGBTI People in the European Union’ (brief, European Parliament, Brussels, May 2017), [www.europarl.europa.eu/RegData/etudes/BRIE/2017/603928/EPRS_BRI\(2017\)603928_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2017/603928/EPRS_BRI(2017)603928_EN.pdf); Daniel Boffey, ‘Gay Spouses Have Rights in All EU Countries, Says European Court Official’, *The Guardian*, 11 January 2018, www.theguardian.com/society/2018/jan/11/gay-spouses-rights-all-eu-countries-european-court-adviser.
- 115 UK Home Office, *Free Movement Rights: Extended Family Members of EEA Nationals* (London: UK Home Office, 2017), www.gov.uk/government/uploads/system/uploads/attachment_data/file/636193/Extended-family-members-V5_0.pdf.
- 116 European Parliament, Directorate-General for Internal Policies, *Obstacles to the Right of Free Movement and Residence*.

exercising their free movement rights as either a worker or self-employed person, can bring these relatives from the host Member State to the United Kingdom under the same, more generous conditions as other EU nationals.¹¹⁷ What will happen in such cases going forward is not explicitly covered by the draft withdrawal agreement, which only details the rights UK nationals will have when resident in a Member State, not in the United Kingdom.

Moreover, a question mark remains over what processes might govern family unification for UK nationals who move to the EU-27 after Brexit—or indeed if a deal between the United Kingdom and European Union falls through. If that is the case, Member States may fall back on the rules in place for third-country nationals, which are often stricter than those for EU citizens. Notably, the sponsor may be forced to provide evidence of a certain level of income, accommodation, and/or minimum length of stay in the Member State, and family members may be subject to additional pre- and post-arrival language proficiency tests and other requirements.¹¹⁸

B. Access to benefits and services

UK citizens covered by the draft withdrawal agreement will enjoy many of the benefits and services after Brexit that they do currently. For example, the agreement preserves the existing EU rules on social-security coordination and pensions uprating¹¹⁹ for all EU and UK nationals covered by the agreement.¹²⁰ Contributions made before and after the transition period will be taken into account when aggregating periods of social-security insurance. However, unlike earlier versions of a deal, the 19 March draft withdrawal agreement includes a provision under which future changes to the EU legislation it refers to will not automatically be incorporated into the withdrawal agreement. Instead, the UK-EU Joint Committee can decide ‘in good faith’ and within six months of the European Union adopting a new regulation whether or not the United Kingdom will have to implement the changes it details. This offers fewer guarantees to UK and EU nationals living abroad and looking to export their benefits. Moreover, the latest draft agreement imposes new limits on citizens’ access to such benefits: instead of having permanently portable benefits, UK citizens living in an EU Member State can only benefit from the existing social-security coordination rules if their residence in the host Member State is ‘uninterrupted’.¹²¹

117 The European Court of Justice’s judgment in the case of Surinder Singh was incorporated into Regulation 9 of the EEA Regulations. See UK Visas and Immigration, ‘Guidance EEA Family Permit: EUN02— 14. EUN2.14 Can Family Members of British Citizens Qualify for an EEA Family Permit? (‘Surinder Singh’ Cases)’, updated 13 November 2013, www.gov.uk/government/publications/eea-family-permits-eun02/eea-family-permit-eun02#eun214-can-family-members-of-british-citizens-qualify-for-an-eea-family-permit-surinder-singh-cases.

118 For example, the Netherlands requires family members to prove A1-level Dutch proficiency prior to arrival and to advance their language proficiency to an A2 level within three years. In response to a query by the European Migration Network, the Dutch government estimated that the average student needs 700 to 800 hours to reach A2-level proficiency Dutch if starting from scratch. The fees for preparatory classes and online tutorials are borne by the applicants (with forgivable loans available under certain conditions), with fees estimated at 150 euros. See European Migration Network (EMN), ‘Ad-Hoc Query on Integration Measures Regarding Language Courses and Civic Integration – Part 1 (response to a request by the EMN made on 12 April 2017)’, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/2017.1167_fr_integration_measures_regarding_language_courses_and_civic_integration_-_part_1.pdf; Dutch Ministry of Justice and Security, Immigration and Naturalisation Service, ‘Basic Civic Integration Examination Abroad’, accessed 4 April 2018, <https://ind.nl/en/pages/basic-civic-integration-examination-abroad.aspx>.

119 Pensions uprating is a system that increases the value of pension payments to keep pace with inflation or increases in wages.

120 These existing health-care reimbursement procedures are set out in ‘Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the Coordination of Social Security Systems’, Articles 24 to 30, *Official Journal of the European Communities* L 166/1, 30 April 2004, <http://eur-lex.europa.eu/eli/reg/2004/883/oj>. See also European Commission, ‘European Commission Draft Withdrawal Agreement’.

121 European Commission, ‘Draft Agreement on the Withdrawal of the United Kingdom’, Article 28(2).

Other outstanding issues associated with access to benefits and services fall into three categories: eligibility, proof, and coverage. Brexit may expose existing deficiencies in health- and social-care systems, especially as affects pensioners, regardless of whether the withdrawal agreement resolves reciprocal health-care issues. In terms of eligibility, significant gaps exist in access to and provision of care. For instance, while pensioners are entitled to an S1 card, which allows them to access care in their country of residence, the cost of which is then reimbursed by the country in which they draw their pension, early retirees are ineligible for such a card. This means that they have to get private health insurance (both for the sake of securing residence rights and to access the care itself). As a result, there is thought to be some fraud related to EU-national residents of other Member States routinely using the European Health Insurance Card (EHIC), which is supposed to be for temporary visitors,¹²² and to the common practice among UK nationals of returning to the United Kingdom to access the UK National Health Service (NHS). If Brexit leads these British populations to register in their Member State of residence, this could effectively mean they can no longer access care from the NHS.

In terms of the proof needed to access benefits and services, EU countries are facing a shift from needing (in most cases) only to see a UK national's passport to requiring them to furnish alternative forms of verification. As a government official in France described it, 'as long as you have your EU passport, no one will ask you questions.'¹²³ In future, it is likely that Member States will have to put into place new systems for verifying that UK nationals are entitled to services. One exception is Ireland, where the situation will likely remain the same after Brexit, with a passport being the main route to accessing services and the labour market, as long as the Common Travel Area (which long predates and is not dependent on the European Union) remains in place. In other countries, access will depend heavily on other forms of documentation.

Brexit may expose existing deficiencies in health- and social-care systems, especially as affects pensioners.

Existing limitations in Member State social-care systems could also become more important after Brexit. In Spain, social care is difficult to access (and there is no in-home care), leaving many pensioners to rely on voluntary services and informal social networks. Community support systems in the country also help pensioners access public health care by providing translation and helping them navigate the idiosyncrasies of the Spanish system. Often, this entails savvy British residents or Spanish locals explaining the cultural differences Britons may encounter in the Spanish health-care system and helping temper expectations of service provisions.¹²⁴ Without free movement for extended family members, it may also become harder after Brexit for older UK nationals to call upon family members living in the United Kingdom to visit them to offer temporary support.

Finally, although EU and UK negotiators committed in the joint report (and the draft withdrawal agreement) to continuing pensions uprating and social insurance arrangements for Britons living in the European Union, many UK nationals are nonetheless facing a loss of income that may leave some at risk of destitution. The depreciating value of the pound—and, as a result, UK pensions and savings—has hit pensioners hard. Unrelated changes to private pension rules could further impact the net income of retired Britons abroad.¹²⁵ On top of that, several countries (including Cyprus, France, Italy, Portugal, and Spain) are not recognised as having

122 Spain operates the *convenio especial* system (a pay-in State Health Scheme special agreement), which allows early retirees to pay a contribution and, in return, receive health care at a lower cost than through private insurance. See Helen McCarthy, *British Pensioners in the European Union after Brexit* (Brussels: Migration Policy Institute Europe, forthcoming).

123 MPI Europe interview with French government officials.

124 Caroline Oliver, 'Peer-Led Care Practices and "Community" Formation in British Retirement Migration', *Nordic Journal of Migration Research* 7, no. 3 (2017): 172–80, <https://doi.org/10.1515/njmr-2017-0027>.

125 Even in the United Kingdom, the Conservative party floated the idea of abandoning the 'triple-lock' on state pensions, which ensures that pensions rise each year according to the highest of one of three measures: wage growth, inflation, and 2.5 pence. However, the party abandoned the proposal in order to build a coalition with the Democratic Unionist Party following the 2017 general election. See Josephine Cumbo, 'State Pension Triple Lock to Remain after Tory-DUP Deal', *Financial Times*, 29 June 2017, www.ft.com/content/90f54d3a-5b58-11e7-9bc8-8055f264aa8b.

Qualifying Recognised Overseas Pension Scheme (QROPS) approval, meaning private pensions cannot be exported from the United Kingdom to these countries.¹²⁶

Even if most of the issues likely to affect UK pensioners in the EU-27 are resolved on paper, many individual Britons will likely still face tricky situations. Retired populations abroad already lack social support networks; post-Brexit communities may find themselves receiving fewer younger retirees, and restrictions on bringing in non-dependent family members limit another source of support.¹²⁷ Studies conducted in Spain have found that some older Britons, facing deteriorating health and mobility, find their only option is to return to the United Kingdom.¹²⁸ The combination of declining net income, unaffordable or inaccessible social care, and potentially more costly health care (at least for some) or declining quality of care as costs go up could be the perfect storm, forcing many to return home. And in the event that travel between the two countries becomes more difficult, there is likely to be a gap in provision for elderly Britons and more pressure on voluntary organisations to step in.

It is likely the United Kingdom will have to prepare for the return of some Britons.

The implications for the balance of payments between the United Kingdom and the remaining Member States are unclear. A 2017 report estimated that ‘if all the British pensioners who currently receive health care in other countries through EU agreements had to return, caring for them would require the NHS to spend an extra £1 billion a year.’¹²⁹ Currently, the UK Department of Health estimates they are covering the health-care costs of some 190,000 pensioners abroad.¹³⁰ While the United Kingdom pays out more than it receives in reimbursements from other Member States,¹³¹ this partly reflects a greater propensity among UK nationals towards early retirement and retirement migration.

All of these factors combined, it is likely the United Kingdom will have to prepare for the return of some Britons, perhaps not because people are no longer legally eligible to stay in their countries of residence, but because it is no longer a viable option financially. Even before the UK referendum, surveys found some UK pensioners in Spain were considering returning home, in part because of the tougher financial situation following the economic crisis.¹³² However, if British nationals in need of medical care are forced to return to the United Kingdom permanently and at short notice, they may struggle to pass the ‘habitual residence test’ that ties non-emergency access to the NHS and local-authority services to having an established residence in the country.¹³³ The prospect of thousands of pensioners returning in need of support in settling back into life in the United Kingdom is thus a possibility the UK government can ill afford to ignore.

126 McCarthy, *British Pensioners in the European Union after Brexit*; Josephine Cumbo, ‘French and Italians Living in UK Face Pension Transfer’, *Financial Times*, 16 December 2016, www.ft.com/content/22a587c6-c2d0-11e6-81c2-f57d90f6741a.

127 McCarthy, *British Pensioners in the European Union after Brexit*.

128 Oliver, ‘Peer-Led Care Practices and “Community” Formation in British Retirement Migration’; Jordi Giner-Monfort, Kelly Hall, and Charles Betty, ‘Back to Brit: Retired British Migrants Returning from Spain’, *Journal of Ethnic and Migration Studies* 42, no. 5 (8 April 2016): 797–815, <https://doi.org/10.1080/1369183X.2015.1100068>.

129 Mark Dayan, ‘General Election 2017: Getting a Brexit Deal that Works for the NHS’ (policy brief, Nuffield Trust, London, May 2017), www.nuffieldtrust.org.uk/files/2017-05/getting-brexit-deal-for-nhs-web-final.pdf.

130 UK House of Commons, Health Committee, ‘Oral Evidence: Brexit and Health and Social Care, HC 640’, updated 28 February 2017, <http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/health-committee/brexit-and-health-and-social-care/oral/48236.html>.

131 For example, the United Kingdom spends about £650 million per year on reciprocal health-care arrangements (£500 million of which is on UK-insured pensioners), while it receives about £55 million from other Member States. See *ibid*.

132 Nearly one-third (29 per cent) of respondents in one survey said they intended to return to the United Kingdom in the next few years. The study also found that returnees tended to be older and have greater health-care needs. See Giner-Monfort, Hall, and Betty, ‘Back to Brit’.

133 In the 12-month period leading up to the end of November 2008, British nationals from around the world failed nearly 3,000 habitual residence tests, according to the UK Department for Work and Pensions. See Royal British Legion, *Caring in Spain: Study into the Current and Future Care Needs of the British Ex-Service Community Permanently Resident in Spain* (Kent: Royal British Legion, 2009), https://media.britishlegion.org.uk/Media/2277/caringinspainreport.pdf?_ga=2.181115815.149157401.1520353074-969339465.1520353074.

C. Political participation and integration

When done well, previous regularisation processes have found that foreign-born populations tend to become more settled as a result of achieving legal status.¹³⁴ While the situation facing UK nationals and the Member States in which they currently reside as EU-national legal residents is markedly different, Brexit and the status-adjustment processes that follow may nonetheless be an opportunity to promote integration by fostering language proficiency, knowledge of local services, and political integration.

With UK nationals set to lose their municipal voting rights once they are no longer EU citizens, this could reshape local politics in regions where British communities play a large role (e.g., certain parts of Spain and Cyprus). In Pegeia, Cyprus, where half the population is not Cypriot, and most non-Cypriots are UK nationals, the British vote can be decisive.¹³⁵ Given historically low rates of naturalisation among UK populations compared to immigrant groups from outside the European Union, however, they are likely under-represented as a constituency at the level of national politics.¹³⁶ This is a reflection of the benefits of EU citizenship, which grants EU-citizen residents of another Member State almost (but not quite) all the entitlements of national citizenship, and thus limits the incentives to naturalise.

After Brexit, there may be additional interest among Britons in the EU-27 in naturalising in order to retain voting and other political rights. Given the evidence on the positive economic benefits of naturalisation¹³⁷—both for individuals and the countries whose citizenship they gain—Member States may wish to make the most of Brexit to promote citizenship and other forms of integration in settled populations. EU nationals are often ineligible for introduction and language courses, which tend to be reserved for third-country nationals;¹³⁸ Member States could use the post-Brexit regularisation process as an opportunity to highlight the integration services on offer and to clarify whether UK nationals are eligible and at what stage.

134 Amanda Levinson, *The Regularisation of Unauthorized Migrants: Literature Survey and Country Case Studies* (Oxford: University of Oxford, Centre on Migration, Policy, and Society, 2005), www.compas.ox.ac.uk/media/ER-2005-Regularisation_Unauthorized_Literature.pdf.

135 MPI Europe interview with Linda LeBlanc and Marinos Lambro.

136 The same holds for EU nationals in the United Kingdom. See Rob Ford, 'Nic O Nas Bez Nas: Why Voting Rights for EU Citizens Should Be on the Political Agenda', Medium, 8 March 2018, <https://medium.com/@robfordmancs/nic-o-nas-bez-nas-why-voting-rights-for-eu-citizens-should-be-on-the-political-agenda-ff991b05b22b>.

137 Madeleine Sumption and Sarah Flamm, *The Economic Value of Citizenship for Immigrants in the United States* (Washington, DC: MPI, 2012), www.migrationpolicy.org/research/economic-value-citizenship.

138 For instance, in Germany, the Federal Office for Migration and Refugees will allow EU citizens to attend an integration course if they do not yet speak German with a certain level of proficiency, if they have particular integration needs, and if there are places available on the course. However, language classes are currently oversubscribed due to the enrolment of large numbers of refugees and asylum seekers, so it is unlikely there would be room for EU nationals. A general integration course consists of 660 hours of instruction and costs 1,287 euros; recipients of unemployment benefit II (*Arbeitslosengeld II*) or social assistance (*Sozialhilfe*) can request an exemption from contributing to the costs of the course. See German Federal Office for Migration and Refugees, 'EU Citizens', updated 22 February 2018, www.bamf.de/EN/Willkommen/DeutschLernen/Integrationskurse/TeilnahmeKosten/EUBuerger/eubuerger-node.html. By contrast, in Denmark, international employees and students are eligible to receive 250 hours of free language training through their municipality. See Work in Denmark, 'Learn Danish for Free', accessed 14 March 2018, www.workindenmark.dk/Living-in-DK/Learn-Danish-for-free. Similarly, Amsterdam allows its residents to access free Dutch lessons if they attend at least 80 per cent of classes and complete the final exam. See I Amsterdam, 'Officially Recognised Dutch Language Courses', accessed 14 March 2018, www.iamsterdam.com/en/living/feel-at-home-in-amsterdam/learning-dutch/free-municipality-courses. And Sweden offers Swedish for Immigrants, a program that provides free language and cultural classes for all legal residents. Residents become eligible for the course by registering with their municipality. See City of Stockholm, 'Swedish for Immigrants (SFI), Information in English', updated 6 February 2018, www.stockholm.se/ForskolaSkola/Vuxenutbildning/SFI---Utbildning-i-svenska-for-invandrare/Swedish-for-immigrants-/.

D. Onward movement and labour-market access

The December joint report left three issues pertaining to workers and business owners outstanding: the right to provide services to a person established in another Member State; access to the labour market in the host and other Member States; and rules governing the recognition of qualifications earned in different countries. The draft withdrawal agreements that have emerged since then offer little clarification except that UK nationals living in the European Union before Brexit, as well as EU nationals in the United Kingdom, will have equal treatment as host-country nationals regarding access to employment. The status of frontier workers is particularly uncertain. They will likely, for example, require two types of documentation: one for work and one for residence. Yet, the draft withdrawal agreement does not contain any specific guidance for what evidence frontier workers will have to provide to prove their situation, potentially leaving Member States to craft their own rules. Moreover, it has not been clarified whether frontier workers will be allowed to seek work in their country of residence if they stop working in the other state.¹³⁹

Unless negotiators reach an agreement on which qualifications will be recognised and through what systems, uncertainty over the transferability of credentials could negatively affect both EU and UK nationals.

A second, lingering labour-market issue concerns the future recognition of professional qualifications (such as those of doctors, midwives, dentists, and architects).¹⁴⁰ Unless negotiators reach an agreement on which qualifications will be recognised and through what systems, uncertainty over the transferability of credentials could negatively affect both EU and UK nationals who have trained in the United Kingdom and seek employment in the EU-27, as well as Britons who gain a qualification overseas with the intention of later working in the United Kingdom. Between 2015 and 2017, more than 3,400 professionals with British qualifications sought recognition for their qualifications in another Member State.¹⁴¹ And while it is unclear how many of these professionals were British citizens as opposed to other EU nationals accredited in the United Kingdom, these figures hint at the considerable flow of professionals between the United Kingdom and its neighbours.

According to the draft withdrawal agreement, UK nationals who have already gotten or are in the process of getting their qualifications recognised before Brexit remain subject to the Recognition of Professional Qualifications Directive and will benefit from its known and simplified procedures;¹⁴² however, the wait time for a

139 British in Europe, 'The Draft Withdrawal Agreement – British in Europe's Comments', updated 14 March 2018, https://britishineurope.org/wp-content/uploads/2018/03/BiE_Detailed-Response-to-draft-WA_FINAL.pdf.

140 Currently, if EU nationals move to a new Member State and want to practise a particular profession that is regulated by the state, they must provide evidence that they have practised for at least two out of the last ten years in addition to other required documents (set by the Member State). See European Union, 'Recognition of Professional Qualifications', updated 4 April 2018, https://europa.eu/youreurope/citizens/work/professional-qualifications/recognition-of-professional-qualifications/index_en.htm.

141 The majority of decisions were taken in Ireland (41 per cent), followed by Italy (12 per cent), and France (10 per cent). See European Commission, 'Regulated Professions Database—Geography of Mobility—Establishment', accessed 12 March 2018, http://ec.europa.eu/growth/tools-databases/regprof/index.cfm?action=stat_origin&b_services=false.

142 This directive states that Member States must consider the qualifications an EU citizen has obtained in another Member State. Aptitude tests, traineeships, and other 'compensatory measures' may be imposed where there are major differences between the training received and the qualifications required by the host Member State for a given occupation. In some professions, such as doctors, nurses, dental practitioners, veterinary surgeons, midwives, pharmacists, and architects, Member State training credentials have been closely aligned and there is an automatic recognition system. Meanwhile, certain professions, such as sailors, lawyers, and commercial agents are subject to EU legislation. See 'Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications', *Official Journal of the European Union* L 255/22, 30 September 2005, <http://data.europa.eu/eli/dir/2005/36/oj>; Julinda Beqiraj, 'FAQ: Professional Qualifications after Brexit' (fact sheet, British Institute of International and Comparative Law, London October 2017), www.biicl.org/documents/1765_faq_-_recognition_of_professional_qualifications_after_brexit.pdf.

decision on these applications may increase.¹⁴³ Yet the draft agreement is mute on how applications launched after the transition period will be handled, which suggests they will be subject to national rules. In Germany, the credential-recognition system for third-country nationals has come to replicate the system for EU nationals, following the *Recognition Act of 2012*. Interviewees therefore felt that Brexit would make no fundamental difference in this regard to UK nationals in Germany, whether current or future residents.¹⁴⁴ Elsewhere, credential-recognition systems are less developed, and gaps between the current and future treatment of UK credentials are expected.

A third concern pertains to the potential vulnerabilities of persons engaged in crossborder work. For example, the draft withdrawal agreement does not clarify whether EU-wide licenses commonly held by such workers (e.g., those for drivers of certain vehicles, train drivers, and slaughtermen) will continue to be recognised in the United Kingdom after Brexit.¹⁴⁵ More fundamentally, the thorny issue of secondary movement remains unresolved. While the February draft agreement included an article that expressly stated that secondary movement and the right to provide services either in another Member State or to persons in other Member States (e.g., online or over the phone) would not be covered by the deal, this article was deleted from the March draft. This revision has caused speculation over whether it was removed intentionally (the numbering of the subsequent articles did not change) and whether the final deal might permit onward movement. Clarifying onward-movement rights will be one of the biggest remaining challenges regarding citizens' rights—and one with huge implications for British citizens weighing up whether naturalising to remain an EU citizen is their only choice to retain the right to free movement.

Clarifying onward-movement rights will be one of the biggest remaining challenges regarding citizens' rights.

British and non-British workers alike could also be affected by broader, Brexit-related economic trends. According to the latest available figures, UK-headquartered multinational companies employed more than 183,200 persons in France in 2015.¹⁴⁶ In the Nouvelle-Aquitaine region alone, these British businesses employed roughly 11,200 or one-fifth of all persons working for EU-based foreign companies, primarily in wholesale and retail trade, transport, and accommodations and catering.¹⁴⁷ If UK companies face new tariffs and regulations, this may have wide-reaching economic implications for the employment of EU nationals across Europe.

E. Advice systems

Systems for advising UK nationals living abroad on how to navigate Brexit-related changes have been very patchy, and strengthening them would likely help allay some of the uncertainty and anxiety described in previous sections. It is currently unclear which actors will give advice and when. For instance, after the publication of the December joint report, some advice institutions felt comfortable reassuring UK nationals that they would receive everything set out by the deal, while others were reticent to say that anything had legally

143 As of the end of 2017, 3,318 cases involving UK qualifications were still being examined and 119 were on appeal. See European Commission, 'Regulated Professions Database—Geography of Mobility—Establishment'.

144 MPI Europe interview with Rudolf Bünthe and Wolfgang Müller.

145 British in Europe, 'The Draft Withdrawal Agreement – British in Europe's Comments'.

146 Grégoire Normand, 'Les multinationales étrangères emploient près de 2 millions de salariés en France', *La Tribune*, 1 February 2018, www.latribune.fr/economie/france/les-multinationales-etrangeres-emploi-pres-de-2-millions-de-salaries-en-france-766894.html.

147 Christian Tchiveindhais, 'Un quart des Britanniques vivant en France sont néo-aquitains' (fact sheet, Insee Flash Nouvelle Aquitaine No. 28, French National Institute of Statistics, Paris, 28 September 2017), www.insee.fr/fr/statistiques/3125028.

changed. Interviews with UK nationals in France and Spain found that many either did not know who to turn to, chose not to engage with campaign and advocacy groups, or were unaware that such groups existed.¹⁴⁸

Among the EU-27, advice systems vary considerably in form and focus—from designed Expat Centres in the Netherlands and the Citizens Information Board in Ireland to the absence of designated informational bodies in Spain or France. Some of these have run proactive outreach campaigns around Brexit. For instance, the Citizens Information Board both provides information on Citizensinformation.ie, an Irish eGovernment initiative,¹⁴⁹ and has run an advertising banner on other websites with the tag ‘Brexit: One Passport or Two?’, inviting users to learn more about acquiring Irish or dual citizenship. By contrast, in most other countries, responsibility for communicating information has fallen to UK embassies, which have played a considerable role in reassuring UK nationals abroad, with some organising Facebook Live events and town hall meetings.¹⁵⁰

Interviews uncovered frustration among some Member State government officials, who felt unable to reassure UK-national populations.¹⁵¹ As one municipal official put it, ‘we still do not know what the rules will be in the end, so we cannot answer the questions very concretely.’¹⁵² Because local authorities have not always been kept up to date on the details of the negotiations, many UK nationals have had to rely on the news and on rumours as guides in planning their lives. In some cases, authorities lamented the fact that good advice does exist on some government websites, but that it has not reached its intended audience.¹⁵³

Finally, the UK nationals who do access advice services are not necessarily those in greatest need of them. Embassies reported finding it difficult to engage UK-national communities with whom they were not already connected, something that may have been exacerbated by their heavy use of social media campaigns to spread information. The types of people most likely to participate in embassy events are likely to already be well-read on Brexit issues, affluent, and from more settled populations.¹⁵⁴ By contrast, the UK nationals that public authorities are most likely to deem at risk are people in precarious employment situations (e.g., on temporary contracts), with more limited means, and less settled in the Member State.¹⁵⁵

Many UK nationals have had to rely on the news and on rumours as guides in planning their lives.

Looking ahead, advice institutions will likely have a hard time giving clear advice to UK nationals seeking secure status if applicants are required to prove that they have been exercising their treaty rights throughout their period of residence. As has been the case since the referendum, such authorities will likely also continue to struggle with the question of what advice can be given and when. To avoid spreading misinformation, UK embassies a number of Member States have thus far used their information sessions to steer concerned UK nationals towards host-country ministries as opposed to taking an active, direct role in helping them regularise their status, lest they provide conflicting information.¹⁵⁶ EU and UK negotiators, and the governments they represent, should treat as a priority clarifying which actors are responsible for giving advice and making sure that the advice given at European, national, and local levels is aligned.

148 Interviews conducted by Michaela Benson and Karen O’Reilly with UK nationals living in France and Spain, 2017–18.

149 Citizens Information, ‘Guide to Brexit’.

150 MPI Europe interview with Sharon Mullen and Gladys Tuur; MPI Europe interview with Christina Smith; MPI Europe interview with representative of Irish diplomatic staff.

151 For example, Dutch officials lamented that not being able to give advice ‘stings and time is running out’. MPI Europe interview with officials from the Dutch Ministry of Employment and Social Affairs.

152 MPI Europe interview with a representative of the Office for Foreigners’ Affairs, Cologne.

153 MPI Europe interview with Christina Smith.

154 MPI Europe interview with British Embassy official.

155 MPI Europe interview with Anja Stiedenroth.

156 MPI Europe interview with Christina Smith.

V. POLICY OPTIONS AND RECOMMENDATIONS

It is important to recognise the difficulties of laying out policy options for UK nationals in the European Union as a discrete group. Almost everything agreed between Brussels and London will take the form of a reciprocal deal (affecting EU nationals in the United Kingdom as well), and anything left up to individual Member States will vary widely. This variation has its roots in the different national systems for managing registration and health-care services (among others), plus the different attributes of UK populations across the EU-27. Many of the proposals set out in this section—especially those on finding ways to give citizens clarity during the negotiations so they can plan their lives—also apply to EU nationals in the United Kingdom. And since the United Kingdom is the actor that triggered the Brexit process, it should lead by example in implementing these recommendations for its EU-citizen residents.

Assuming that the withdrawal agreement closely follows the March 2018 draft, Member States will face three main tasks in implementing it: converting existing permanent-residence documentation to a new permanent-residence system, if they introduce one, within six months of the end of the transition period;¹⁵⁷ processing (likely a larger number) of new applications for permanent residence and citizenship; and determining eligibility for residence for Britons who arrived before the end of the transition period, but have been resident for fewer than five years.¹⁵⁸

Almost everything agreed between Brussels and London will take the form of a reciprocal deal ... and anything left up to individual Member States will vary widely.

In all three tasks, Member States will face the challenge of designing systems that have clear, easy-to-follow rules and predictable outcomes; ensuring that applications can be processed in a timely fashion; and providing safeguards and alternatives for those who struggle to fulfil criteria.¹⁵⁹ Previous studies of regularisation processes point to four hallmarks of success: inclusiveness (covering a large share of the population in question), fairness (not rewarding bad behaviour), cost effectiveness (positive economic impact), and self-enforcement (encouraging a high level of compliance without admitting people who are ineligible or encouraging future illegal immigration).¹⁶⁰ European policymakers would do well to keep these guiding principles in mind as they design and implement systems to regularise the status of UK nationals after Brexit.

¹⁵⁷ Applicants will have six months after the end of the transition period to submit applications to have their permanent-residence status converted. The draft withdrawal agreement also allows the United Kingdom and EU-27 Member States to apply for a one-year extension if they are facing processing backlogs.

¹⁵⁸ According to guidance published by the UK government, EU nationals who exercise their free movement rights before 29 March 2019 will be able to apply for settled status or temporary residence permits; those who arrive after that date but within the 21-month transition period will be able to live, work, and study in the United Kingdom subject to a registration scheme. Initially, the UK government indicated that arrivals during the transition would be subject to undetermined future immigration controls; however, following the latest rounds of negotiations, such persons are to have the same rights as those who arrive before 29 March 2019. These rights will be reciprocated for UK nationals in the European Union. See UK Home Office, UK Visas and Immigration, and UK Department for Exiting the European Union, 'Guidance - Status of EU Citizens in the UK'.

¹⁵⁹ As described by a prominent UK immigration law expert, there are three principles that should be followed when designing systems: they should be intelligible, clear, and predictable. See Colin Yeo, 'How Complex Are the UK Immigration Rules and Is This a Problem?', Free Movement, 24 January 2018, www.freemovement.org.uk/how-complex-are-the-uk-immigration-rules-and-is-this-a-problem/.

¹⁶⁰ Rosenblum, *Immigrant Legalization in the United States and European Union*.

A. *Balancing inclusiveness with fraud prevention*

The first major hurdle Member State policymakers will need to clear is finding a balance between designing regularisation systems that are inclusive of a large share of their UK-national residents but strict enough to prevent fraud. Much of this will come down to the criteria and evidence requirements they set. Studies have found that prospective, rather than retrospective, requirements are both easier for legitimate applicants to fulfil and invite less fraud. The further back applicants must reach for proof to meet retrospective requirements, the more likely some people with legitimate claims are to have their applications rejected or to submit fraudulent documents, should they be unable to locate valid ones. Given that anyone who arrives before the end of the transition period will be able to stay, Member States may also wish to avoid a ‘closing down sale’, where UK nationals move to the country and fulfil the minimum necessary to establish an initial residence, then return to the United Kingdom and later backfill with fraudulent documents to receive permanent residence in that Member State.¹⁶¹

The second piece to this challenge concerns the forms of evidence will be accepted as proof that a UK-national legally resided in the Member State prior to the cut-off date. While many applicants will have official documentary evidence (e.g., bank statements, tenancy and mortgage agreements, or utility bills), provisions need to be in place for people who entered the country before a certain date but are unable to document this fact through official means; these might include social-media records or statements from known professionals they interacted with at the time.¹⁶²

Specifically, the following recommendations could help policymakers walk this fine line when designing an accessible but rigorous system:

- Member States should impose prospective, rather than retrospective, requirements wherever possible, and as indicated by the draft withdrawal agreement. For instance, for applicants for permanent residence should only be required to furnish evidence of initial municipal registration or proof of address, and that they are exercising their treaty rights at the point of application (rather than for the full five years of residence). To reduce the risk that this encourages people who lived in the Member State five years ago to submit a fraudulent application, policymakers should consider ways to encourage self-compliance (e.g., through spot checks of self-reported statements about residence and work history).
- Barriers to proving legal residence should be low. For instance, for applicants who have lived in the Member State for fewer than five years, workers should only be required to prove they have a current employment contract at the point application, rather than a detailed work

¹⁶¹ The draft withdrawal agreement heeds these lessons when laying out what documentary evidence Member States can request from workers, the economically inactive, students, and their resident and nonresident family members. Unlike current permanent-residence processes detailed by EU law, which can require EU nationals to prove that they held continuous health insurance and/or sufficient resources during for the extent of their residence, the draft agreement only requires applicants to prove they are exercising their treaty rights at the point of application. For example, economically inactive persons must only provide evidence of sufficient resources and current comprehensive sickness insurance, which is arguably a better indication of current and future integration prospects than evidence they held such insurance previously. Similarly, students need only provide proof of enrolment in an accredited institution, comprehensive sickness insurance, and a declaration that they have sufficient resources (without having to provide proof of these resources). See European Commission, ‘European Commission Draft Withdrawal Agreement’.

¹⁶² A recent position paper on the new UK settled status system suggests that ‘self-declaration’ could be an alternative form of identification to prove address details, for instance. See Ruth Gripper, ‘Transition Advice Fund: Position Paper on Settled Status’ (Transition Advice Fund position paper, New Philanthropy Capital, London, 30 January 2018), www.thinknpc.org/publications/transition-advice-fund-position-paper/. In the U.S. context, social-media photos, check-ins, and location-based data have been used as evidence to prove residence in immigration cases where applicants lack a paper trail. See Chris Fowler, ‘Immigrants Use Social Networking to Prove Residency’, NextGov, 21 November 2014, www.nextgov.com/emerging-tech/2014/11/immigrants-are-using-facebook-check-ins-prove-residency/99659/.

history. Member States could also consider dropping the comprehensive sickness insurance requirement for people who are economically inactive, conditional on the United Kingdom following through on its commitment to do this for resident EU nationals.

- A flexible approach should be taken to the types of documentation accepted, but this could be staggered, with a more demanding set of proof required of recent arrivals should they later apply for permanent residence. While the draft withdrawal agreement already sets out a broad range of documents that would be considered, Member States should consider going further, including by accepting verified copies of passports and identity documents. For applicants that lack a paper trail, Member States should consider alternative options such as social-media records and letters from landlords or employers. However, more robust documentation could be demanded of recent arrivals, since UK nationals will have more complete information early on about what documentation they will have to show in the future.

B. Designing transparent, smooth, and streamlined systems

Member States should design systems that are multilingual, user-friendly, and that present material in a way that is easy for applicants with limited literacy (and digital literacy) to understand. Government websites—and especially immigration websites—are often difficult to understand, offering contradictory advice in different sections. As a result, frustrated users may turn to less official sources of information. Moreover, assumptions are often made about digital literacy—and, more broadly, about the ability to distinguish between credible and untrustworthy sources—that could result in some groups being misinformed or exploited. And since a non-negligible portion of the UK population abroad is retired and/or of an older generation, it will likely be important to offer assistance to people struggling to navigate government websites.

There are now well-established design principles on how best to communicate with the public, best practices that most government communications fall far short of.

In an ideal world, Member States would seize on the opportunity offered by Brexit, and by growing foreign-born resident populations more broadly, to rethink how all government communications (online and offline) are managed. There are now well-established design principles on how best to communicate with the public, best practices that most government communications fall far short of.¹⁶³ New government digital services, such as the UK Government Digital Service and 18F in the United States, are pioneering ways to redesign online services from end to end with the aim of avoiding inconsistencies in information, reducing bottlenecks and unnecessary bureaucracy, and improving user experience. One of the UK Government Digital Service's design principles, for instance, is that all government communications should be written for a reading age of 9 (the most basic level of writing in which it is still possible to communicate the necessary content).¹⁶⁴ The German government's multilingual credential recognition platform also offers a leading-edge example in improving access to online information.¹⁶⁵ Brexit could provide an opportunity to drive this work forward.

In addition to improving access, new systems also need to run as smoothly as possible. At a minimum, it should be possible to file an application online (many countries currently require in-person applications for registration and permanent residence). Other adaptations could include allowing families to file a single,

¹⁶³ See for instance UK Government Digital Service, 'Government Design Principles', updated 3 April 2012, www.gov.uk/guidance/government-design-principles.

¹⁶⁴ Ibid.

¹⁶⁵ German Federal Ministry of Education and Research, 'Recognition in Germany: Information Portal of the German Government for the Recognition of Foreign Professional Qualifications', accessed 11 April 2018, www.anererkennung-in-deutschland.de/html/en/.

linked application¹⁶⁶ or pulling in existing information about applicants from other services to autofill key sections of the application. Member States could choose to view Brexit as a one-off chance to pilot new immigration processing systems, with the option of later scaling them up and applying them to other types of immigration if successful. This could be especially helpful in countries with backlogs in various immigration processing channels.

However, it is likely that the process of implementing a new system will not be entirely smooth. Contingency planning is necessary to help any process adapt to bottlenecks and backlogs. And, as noted by the draft withdrawal agreement, it is important that UK nationals have something they can use as evidence of their residence status in their everyday lives while they wait for formal documentation.¹⁶⁷

Following are several recommendations for achieving this type of transparency and efficiency.

- It should be possible to file an application online. Websites to access information about the process and to apply for status should be multilingual, designed around user needs, and present material in a way that is easy for applicants with limited (digital) literacy to understand.
- Member States could consider offering anyone who applies for status an initial document (both in print and digitally) that shows that their application is being processed; this would not be valid indefinitely but could be used in the interim. Such a document would function like a temporary driving licence or library card. A similar proposal was included in the draft withdrawal agreement.¹⁶⁸
- The draft withdrawal agreement mandated that applications by families submitted at the same time be considered together—an approach that would ease both the administrative burden on processing systems and the financial strain on families. The final withdrawal agreement should be further amended to indicate that fees are to be charged per family instead of per person in such cases.
- A fair and generous system of appeals should also be put in place for UK nationals who do not register in time. While the draft withdrawal agreement provides for a six-month grace period, a two-year grace period could allow governments the time to invest in more creative and targeted outreach. Additionally, applications should not be rejected outright on the basis of insufficient evidence, but should instead be returned with a request for further documentation. All efforts should be made to minimise the number of people who fall into irregular status.

C. Employing smart outreach

Outreach strategies should be considered as part of a tiered process, with some actions deployed during negotiations, others during a transitional period, and still others once this period has concluded. There is a dire need for clear advice to reassure and support UK citizens abroad (and their EU counterparts in the United Kingdom), and Member States should consider revising their guidelines in light of the recent agreements to offer some clarity. While it may not be possible for advice services to give unequivocal guarantees about what will be agreed in the final withdrawal agreement, they could take a more active role in encouraging UK nationals to collect documents about certain aspects of their lives that may later be of use. And instead of seeing the process of implementation as something that comes after the negotiations are concluded, it would be in everyone's interests to set as many eligible UK nationals as possible on the pathways to permanent residence now to avoid future bottlenecks.

¹⁶⁶ The draft withdrawal agreement stipulates that applications by family members that are submitted together will be determined at the same time. See European Commission, 'European Commission Draft Withdrawal Agreement'; Gripper, 'Transition Advice Fund: Position Paper on Settled Status'.

¹⁶⁷ According to the draft withdrawal agreement, a certificate of application for the residence document will be issued immediately as proof.

¹⁶⁸ European Commission, 'European Commission Draft Withdrawal Agreement'.

Once the withdrawal agreement is announced and the window for registration is open, UK nationals abroad, especially those with more limited (digital) literacy, will need opportunities and reminders to apply for status in a range of settings, from local libraries and pubs to hospitals and schools. Funding outreach may be expensive, and the UK Foreign Office should consider making funds available to local authorities with large UK-resident populations, perhaps as a way to support designated point persons within local advice centres (e.g., citizens' advice bureaus, one-stop shops, municipal offices, or Expat centres). There are also a host of innovative ways governments could improve uptake of services and user experience, from user-focused design principles to behavioural insights, an approach that uses psychology and behavioural economics to design more efficient public services. For instance, behavioural experiments point to ways social networks can be used to encourage uptake of benefits and services, strategies that could perhaps be adapted to encourage Britons who have already signed up for status to recruit their friends.¹⁶⁹

Funding outreach may be expensive, and the UK Foreign Office should consider making funds available to local authorities with large UK-resident populations.

There are a number of steps that policymakers should consider to achieve this type of inclusive yet efficient outreach.

- Once the window for registration is open, Member States should make the most of other points at which UK citizens interact with host-country public services to encourage them to apply (e.g., when registering for a driving licence or visiting a hospital).
- The European institutions could consider issuing guidance to Member States (and the United Kingdom) on how to communicate preliminary progress. For instance, they could recommend government websites at least acknowledge that there has been a preliminary agreement on a number of issues relating to citizens' rights and point users to the joint report and question-and-answer document produced by the Commission. To minimise processing bottlenecks, potential applicants should also be encouraged to begin collecting necessary evidence now (and countries should publish in advance lists of the types of documents that will be needed).
- The UK Foreign Office should begin exploring opportunities to combine online and offline outreach. This might include posting notices in English-language print or online newspapers, placing advertisements on websites to catch the eye as Britons search for information on Brexit (as done by the Citizens Information Board, using the banner described in Section IV.E.). The Foreign Office should also seek to tap into existing networks of British cultural and voluntary associations.
- The UK government could consider working with leading policy labs and/or behavioural-insight specialists to develop innovative ways of improving uptake of application processes by UK nationals abroad.

D. Creating an opportunity for integration

While UK nationals in Europe (as former EU nationals and legal residents) are a significantly different population than has been the target of past regularisation programmes, Brexit may still mark a turning point after which British communities in Europe become more settled. As such, policymakers should consider ways to make use of this status change to promote integration. The integration needs of EU nationals in other Member States have historically been in the blindspot, with EU institutions largely refusing to acknowledge

¹⁶⁹ Participant comments during the roundtable meeting 'Beyond "Deal or No Deal"'.

that mobile Europeans may share needs with other immigrants. The fact that programmes for EU citizens are ineligible for funding through the European Integration Fund (EIF) and the Asylum Migration and Integration Fund (AMIF) has meant that language courses for EU nationals are often underfunded compared to those for third-country nationals. Brexit could provide an opportunity to revisit the services available for foreign-born residents who are not third-country nationals, whether EU citizens, naturalised citizens, or UK nationals (whatever status they may hold going forward). To the extent that language courses are already on offer, Member States could use the regularisation process to point UK nationals in their direction.

The regularisation process also has an important symbolic dimension. Just as it is important that the United Kingdom makes it clear to its EU-national residents that they are welcome and wanted, Member States should offer a warm welcome to UK nationals who are eligible to stay. As part of this symbolic process of inclusion, Member States that have rules on dual citizenship could consider loosening these restrictions so more Britons and their families are able to become citizens and fully participate in public life.

Policymakers seeking to seize this opportunity to promote integration should consider the following recommendations.

- The European institutions could consider loosening the rules on the use of AMIF funding so that EU nationals, present and past (i.e., UK nationals in the EU-27), and citizens can access AMIF-funded courses that support language learning and other aspects of integration.
- Member States with restrictions on dual citizenship, and particularly those with large UK-national populations (e.g., Spain), could consider loosening these restrictions to encourage foreign-born residents to consider and work towards citizenship.
- The United Kingdom could consider pursuing bilateral agreements, offering to reduce the barriers to UK citizenship for nationals of EU-27 countries that host large British populations in return for similarly reduced barriers to Member State citizenship for UK nationals.
- The Brexit negotiations process has been one of upheaval and uncertainty thus far. Going forward, Member States should consider how to best communicate a message of welcome to resident UK nationals and make it clear they will be supported in their applications to stay.

E. Preparing for returns

Finally, it is likely that whatever happens in the process of finalising a withdrawal agreement, the upheaval that Brexit has wrought is likely to bring with it continued economic uncertainty and, thus, to shrink the net pensions of UK nationals abroad. And with the adult children of pensioners poised to lose their free-movement rights, a sizeable number of pensioners are likely to return to the United Kingdom. UK policymakers must act now if UK housing, health, and social-care systems are to be prepared in time for their arrival. They may also wish to consider the implications for returning young people who have been in temporary work abroad—another group that may struggle both to achieve legal status and to manage the returns process. For the families of returning British nationals, the UK government may wish to loosen income restrictions on family unification, since families in which partners or parents and children have different nationalities may be unable to live together elsewhere.

Finally, clear information and guidance on how returning to the United Kingdom will affect access to benefits and services would be helpful for Britons weighing their post-Brexit options. Two steps may help ease their transition back to the United Kingdom:

- The UK government could consider dropping the habitual residence requirement for returning UK nationals. This test has been a point of contention with the European institutions in the past. For

Brexit returnees, a non-negligible share of whom are likely to be elderly and infirm pensioners in need of immediate access to elder care, forcing them to prove their intentions to stay could lock them out of vital benefits for some time.

- The UK government should publish guidance for UK nationals abroad on returning to the United Kingdom. This might include, among other things, a checklist on accessing services and (if left in place) guidance on what proof will be needed to pass the habitual residence test so returnees can make preparations to fulfil these requirements in advance.

Much of what will affect the lives and livelihoods of UK nationals currently living in the European Union after Brexit extends far beyond the eventual deal on citizens' rights. Chief among these factors is the decision reached about the future EU mobility rights of UK nationals who do not move before the end of the transition agreement but may have family members currently living abroad. As such, the future UK nationals in the EU-27 are headed towards is difficult to predict. However, the pre-eminent goal of any new system for regularising their statuses should be to avoid creating a large unauthorised population—a risk previous regularisation schemes worldwide have shown to be very real. Member States should endeavour to avoid this scenario at all costs, even if it means relaxing certain requirements. And since every aspect of the deal will be reciprocal, the UK government should take the lead in offering concessions to EU nationals living in the United Kingdom—for the good of their own citizens.

The pre-eminent goal of any new system for regularising their statuses should be to avoid creating a large unauthorised population.

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Meghan Benton is a Senior Policy Analyst and Assistant Director for Research for the International Programme at the Migration Policy Institute (MPI). She is also a Nonresident Fellow with MPI Europe. Her areas of expertise include immigrant integration (especially labour-market integration and integration at the local level), free movement and Brexit, and the role of technological and social innovation in responses to the refugee and migration crisis in Europe.

Dr. Benton previously was a Senior Researcher at Nesta, the United Kingdom’s innovation body, where she led projects on digital government and the future of local public services. Prior to joining Nesta, she was a policy analyst at MPI from 2012 to 2015, where she co-led an MPI-International Labour Organisation six-country project on pathways to skilled work for newly arrived immigrants in Europe. She also worked on Project UPSTREAM, a four-country project on mainstreaming immigrant integration in the European Union. Previously, she worked for the Constitution Unit at University College London and the Institute for Public Policy Research.

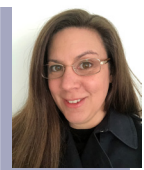
Dr. Benton received her PhD in political science from University College London, where her PhD research focussed on citizenship and the rights of noncitizens. She also holds a master’s degree in legal and political theory (with distinction) from University College London, and a bachelor’s degree in philosophy and literature from Warwick University.



Aliyyah Ahad is an Associate Policy Analyst with MPI Europe, where her research focuses on European asylum policies, unaccompanied minors, and social innovation in refugee reception and integration.

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Ms. Ahad holds a master of science in migration studies and master of public policy, with distinction, from the University of Oxford, where she studied as a Rhodes Scholar. She also holds an honours bachelor of arts degree in political science and sociology from the University of Toronto, with high distinction. Ms. Ahad also spent a year studying at Sciences Po Paris, where she received an exchange program certificate, cum laude.



Michaela Benson is a Reader in sociology at Goldsmiths, University of London. She is the research lead for the project ‘BrExpats: Freedom of Movement, Citizenship, and Brexit in the Lives of Britons Resident in the EU-27’, which is funded by the UK in a Changing Europe initiative. She is well known for her research about lifestyle migration and UK citizens living in rural France, conducting research, writing, and speaking on these topics.

Dr. Benson’s work has been published in her book *The British in Rural France* (Manchester University Press, 2011), which was shortlisted for the British Sociological Association’s Philip Abrams Memorial Prize in 2012. She is the editor of several edited volumes and the author of numerous academic journal articles.

Dr. Benson received a PhD in sociology and social anthropology from the University of Hull. Her thesis was the first ethnographic study of UK citizens living in rural France, and focussed on migration, identity, and belonging.



Katherine Collins is a Research Associate at Goldsmiths, University of London, working on the ‘BrExpats: Freedom of Movement, Citizenship, and Brexit in the Lives of Britons Resident in the EU-27’ research team. She is also a Visiting Scholar at the Oxford Centre for Life-Writing, where she coordinates the Life-Writing as Inquiry research strand and is undertaking a prosopographical survey of British expatriate communities in Europe in the 19th and 20th centuries, funded by the Oxford Dictionary of National Biography.

Dr. Collins holds a PhD in social research, awarded by the University of the West of England for her participatory action research into risky drinking in deprived areas. She also holds an MA in social research.



Helen McCarthy is a doctoral candidate at Middlesex University whose research interests include immigrant integration, the labour market, and citizenship. She has previously worked with MPI Europe on Project UPSTREAM, looking at the mainstreaming of immigrant integration policies in the European Union. She has also worked at the Centre on Migration, Policy, and Society (COMPAS) at the University of Oxford; in the Integration and Faith team within the London Department for Communities and Local Government; and at Amnesty International in Brussels.

Ms. McCarthy holds a master’s degree in global migration from University College London and a master’s degree in social anthropology from the National University of Ireland, Maynooth.



Karen O’Reilly is Professor Emeritus at Loughborough University and Professorial Research Fellow on the ‘BrExpats: Freedom of Movement, Citizenship, and Brexit in the Lives of Britons Resident in the EU-27’ research project. Through her research on British migrants living in Spain in the 1990s, she set the agenda for the sociological study of British migration.

Her research has been published as *The British on the Costa del Sol* (Routledge, 2000) and in numerous academic journal articles. Professor O’Reilly has more recently complemented this with research on Britons living and working in Malaysia and Thailand. Her book *International Migration and Social Theory* (Palgrave, 2012) won the CHOICE Outstanding Academic Title award.

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Migration Policy Institute Europe, established in Brussels in 2011, is a non-profit, independent research institute that aims to provide a better understanding of migration in Europe and thus promote effective policymaking. Building upon the experience and resources of the Migration Policy Institute, which operates internationally, MPI Europe provides authoritative research and practical policy design to governmental and nongovernmental stakeholders who seek more effective management of immigration, immigrant integration, and asylum systems as well as successful outcomes for newcomers, families of immigrant background, and receiving communities throughout Europe. MPI Europe also provides a forum for the exchange of information on migration and immigrant integration practices within the European Union and Europe more generally.

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