



BRIEFING PAPER

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Brexit and European Citizenship

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2. EU 'Associate Citizenship'?
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Summary

European Union citizenship was formally introduced in Article 2 of the *Treaty on European Union* (TEU or Maastricht Treaty) in 1992 and was further developed by subsequent EU Treaty amendments (Amsterdam and Lisbon).

Under Articles 20 – 24 of the Treaty on the Functioning of the European Union (TFEU) and other Treaty Articles, EU citizens have the right to move and reside freely in other Member States, to vote and to stand as candidates in municipal and European Parliament (EP) elections, to petition the EP, to apply to the European Ombudsman, to claim in a third country the protection of the diplomatic and consular authorities of any other EU Member State, and the right to start a Citizens' Initiative.

When the UK leaves the EU in March 2019, UK citizens will no longer be EU citizens (unless they have dual nationality) and so will lose EU citizenship rights. In the withdrawal negotiations agreement was reached on many citizens' rights provisions in a [Joint Report](#) of December 2017 and in a [Draft Withdrawal Agreement](#) published by the EU in March 2018. But these will not guarantee the existing automatic Treaty rights to the status of Union citizenship.

There are arguments about the feasibility of retaining EU citizenship, with the weight of opinion maintaining that it is not possible for UK citizens to keep their EU citizenship after the UK leaves the EU – notwithstanding that some of the practical aspects of citizenship are being negotiated for inclusion in the EU-UK withdrawal agreement.

Aside from agreement on citizens' rights in the withdrawal negotiations, there has been a more visceral debate about identity as a European citizen, the extent to which EU citizenship is linked to national citizenship, and whether UK nationals could retain Union citizenship - or some form of it, such as an 'associated' EU citizenship - after Brexit.

The EU and UK Parliaments have debated 'associate' citizenship and the UK Government has said it is prepared to listen to such suggestions. But so far there has been no indication of EU or UK efforts in the withdrawal negotiations to introduce such a status.

A form of 'associate' status does not exist at present and would probably require Treaty change, although some commentators believe it would not.

Since the EU referendum in June 2016, public opinion polls of UK nationals living in the UK or exercising their free movement rights abroad indicate an increasing number who would like to keep their EU citizenship rights. There have also been campaigns, petitions in the EU and the UK and EU Citizens' Initiatives calling for UK nationals to be able to keep their EU citizenship after Brexit.

1. What is EU citizenship?

Summary

Under Articles in the Treaty on the Functioning of the European Union (TFEU) EU citizens have the right to move and reside freely in other Member States, to vote and to stand as candidates in municipal and European Parliament (EP) elections, to petition the EP, to apply to the European Ombudsman, to claim in a third country the protection of the diplomatic and consular authorities of any other EU Member State, and the right to start a Citizens' Initiative. Other rights are provided in EU secondary law and the Charter of Fundamental Rights.

Public international law provides that everyone has the right to nationality, which establishes their relationship to a state, but it does not provide that everyone has the right to citizenship (in Mexico, for example, the law differentiates between nationality and citizenship, which may be granted to nationals at age 18).

1.1 Background

Maastricht Treaty

European Union 'citizenship' was formally introduced in Article 2 of the *Treaty on European Union* (TEU or Maastricht Treaty) in 1992, which stated that the Union aims to **"strengthen the protection of the rights and interests of the nationals of its Member States through the introduction of a citizenship of the Union"**. In addition to the existing rights to move, work and reside freely in any Member State, Maastricht introduced voting and election rights in European Parliament (EP) and local elections, and extra consular protection for EU citizens.¹

"And why should there not be a European group which could give a sense of enlarged patriotism and common citizenship to the distracted peoples of this turbulent and mighty continent ..."

[Winston Churchill](#),
Zurich, 19 September
1946.

Amsterdam Treaty

The Amsterdam Treaty extended citizens' rights with a new anti-discrimination clause, while Article 17 of the *Treaty Establishing the European Community* (TEC – now TFEU) stipulated that Union citizenship "shall complement and not replace national citizenship".

Nice Treaty

The EU Charter of Fundamental Rights, which contains a chapter on Citizens' Rights, was 'proclaimed' in 2000 but was not at this point incorporated into the EU Treaties.

Lisbon Treaty

¹ Denmark added a unilateral [Declaration on Citizenship of the Union](#) in an Annex to the Treaty, which stated that "[c]itizenship of the Union is a political and legal concept which is entirely different from the concept of citizenship within the meaning of the Constitution of the Kingdom of Denmark and of the Danish legal system. Nothing in the Treaty on European Union implies or foresees an undertaking to create a citizenship of the Union in the sense of citizenship of a nation-State".

The Lisbon Treaty, which came into force in December 2009 (and the failed constitutional treaty before it), incorporated the Charter of Fundamental Rights into the EU Treaties and added the right to start a Citizens' Initiative, considered further below. Lisbon retained most of the wording of Article 17 TEC, specifying the rights contained in the present EU Treaty, but replaced “complement” with “additional to”. Article 20 TFEU (ex-Article 17) thus states: “Citizenship of the Union shall be additional to and not replace national citizenship”.

This emphasises that EU citizenship does not replace national citizenship, but adds an extra layer of rights. There is also a reminder that the rights of citizenship “shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder”. In other words, EU citizenship applies in the context of, and is limited by, EU Treaty provisions and laws.

1.2 Treaty Articles on Union citizenship

The [Preamble of the TEU](#) states that the signatories are “resolved to establish a citizenship common to nationals of their countries”.

Article 9 TEU states:

In all its activities, the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies. Every national of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to national citizenship and shall not replace it.

The terms of EU citizenship are set out in **Articles 20-24** of the *Treaty on the Functioning of the European Union* (TFEU). Article 20 contains a short description of the entire collection of citizenship rights, and Articles 21-24 set these out (and specify how the EU is able to regulate these rights) in more detail:

Article 20

1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship.

2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. They shall have, *inter alia*:

(a) the right to move and reside freely within the territory of the Member States;

(b) the right to vote and to stand as candidates in elections to the European Parliament and in municipal elections in their Member State of residence, under the same conditions as nationals of that State;

(c) the right to enjoy, in the territory of a third country in which the Member State of which they are nationals is not represented, the protection of the diplomatic and consular authorities of any Member State on the same conditions as the nationals of that State;

(d) the right to petition the European Parliament, to apply to the European Ombudsman, and to address the institutions and advisory bodies of the Union in any of the Treaty languages and to obtain a reply in the same language.

These rights shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder.

Article 21

1. Every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give them effect.

2. If action by the Union should prove necessary to attain this objective and the Treaties have not provided the necessary powers, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may adopt provisions with a view to facilitating the exercise of the rights referred to in paragraph 1.

3. For the same purposes as those referred to in paragraph 1 and if the Treaties have not provided the necessary powers, the Council, acting in accordance with a special legislative procedure, may adopt measures concerning social security or social protection. The Council shall act unanimously after consulting the European Parliament.

Article 22

1. Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

2. Without prejudice to Article 223(1) and to the provisions adopted for its implementation, every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate in elections to the European Parliament in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements adopted by the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

Article 23

Every citizen of the Union shall, in the territory of a third country in which the Member State of which he is a national is not represented, be entitled to protection by the diplomatic or consular authorities of any Member State, on the same conditions as the nationals of that State. Member States shall adopt the necessary provisions and start the international negotiations required to secure this protection.

The Council, acting in accordance with a special legislative procedure and after consulting the European Parliament, may

adopt directives establishing the coordination and cooperation measures necessary to facilitate such protection.

Article 24

The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the provisions for the procedures and conditions required for a citizens' initiative within the meaning of Article 11 of the Treaty on European Union, including the minimum number of Member States from which such citizens must come.

Every citizen of the Union shall have the right to petition the European Parliament in accordance with Article 227.

Every citizen of the Union may apply to the Ombudsman established in accordance with Article 228.

Every citizen of the Union may write to any of the institutions or bodies referred to in this Article or in Article 13 of the Treaty on European Union in one of the languages mentioned in Article 55(1) of the Treaty on European Union and have an answer in the same language.²

Article 25 provides that these rights can be expanded.

New to the Lisbon Treaty is the first paragraph of Article 24, enabling further legislation by the EU in order to establish the Citizens' Initiative'. It complements Article 11(4) TEU:

Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.

Articles 21-24 have resulted in the adoption of more detailed provisions in EU laws such as the 'citizenship directive' ([Directive 2004/38/EC](#)), measures on consular protection ([Council Directive \(EU\) 2015/637](#)), anti-discrimination and reciprocal healthcare. There is a useful summary of the rights provided by the citizenship directive in [The rights of EU citizens and their families](#), Lords European Union Committee report on 'Brexit: acquired rights'.³

EU citizenship rights are not all exclusive to citizens of EU Member States; third country nationals legally resident in an EU Member State may also receive some of the benefits of EU citizenship. An EP Research Service briefing explains:

For example, the right to petition the European Parliament or complain to the European Ombudsman is granted to Union citizens and any 'natural or legal person residing or having its registered office in a Member State' (EU Charter of Fundamental Rights). Moreover, third-country nationals who are long-term residents (normally for at least five years) enjoy equal treatment

² Official Journal of the European Union, [C 326, 26 October 2012](#)

³ Chapter 2, 10th Report of Session 2016-17, 14 December 2016

with regard to a broad range of entitlements (Directive 2003/109).⁴

1.3 EU citizenship and domestic nationality

Different from national citizenship ...

The term 'nationality' is often used as a substitute for 'citizenship' and vice versa, but there are differences between nationality and citizenship in legal terms. These differences are relevant to the concept of EU/Union citizenship. While nationality is usually acquired by birth, adoption, descent or marriage, citizenship specifies the legal relationship between a state and a person.⁵ There is no 'EU nationality' but EU citizenship is dependent on nationality: a citizen of the Union is someone who holds the nationality of a Member State (Article 20(1) TFEU).

In a paper on supranational citizenship, Dr Greta Gilbertson commented on the hierarchical link between EU and national citizenship:

Although some have hailed EU citizenship as a new, post-national form of membership, it remains subordinate to national citizenship. It is linked to the citizenship of a Member State, and Member States still control who can receive their citizenship.⁶

... but based on domestic law

EU law provides that the basis for EU citizenship lies in the domestic law of Member States. The European Commission [notes](#): "[t]he question of whether an individual possesses the nationality of a Member State is settled solely by reference to the national law of the Member State concerned. Thus, it is for each Member State to lay down the conditions for the acquisition and loss of nationality". But as some EU Member States grant nationality more readily than others, and some allow dual nationality while others don't, EU citizenship is not acquired or lost uniformly across the EU.⁷

No citizenship duties

An EP factsheet points out that "Union citizenship does not entail any duties for citizens of the Union, despite the wording to that effect in Article 20(2) of the TFEU. This constitutes a major difference between EU citizenship and citizenship of a Member State.⁸ Other analysts have emphasised the general lack of 'duty' associated with EU citizenship, which distinguishes it from national citizenship. Dr Annette Schrauven writes: "Where national citizenship imposes duties such as paying taxes,

⁴ European Parliamentary Research Service, [EU citizenship rights](#), Laura Tilindyte, March 2017

⁵ There are detailed analyses of these terms in international law texts, but for a basic overview, see The Economist, [What is the difference between nationality and citizenship?](#) "The two concepts are closely related but not quite the same", 10 July 2017.

⁶ Migration Information, [Citizenship in a Globalized World](#), Dr Greta Gilbertson, Fordham University, January 2006.

⁷ For information on how citizenship is acquired and lost across Europe, see the Global Citizenship Observatory [website](#) and European Parliamentary Research Service, [Acquisition and loss of citizenship in EU Member States. Key trends and issues](#), Maria Margarita Mentzelopoulou and Costica Dumbrava, July 2018.

⁸ European Parliament, [The citizens of the Union and their rights](#), Udo Bux, 03/2018

military service and voting, these duties are missing when it comes to Union citizenship”.⁹ In a footnote Schrauwen clarifies: “The duty to obey European law is mostly indirect, via the national level. Citizens are only directly bound by European law in those instances where provisions have horizontal direct effect”.¹⁰ She concludes that “as long as there are no direct duties related to the status of Union citizenship, but only a bundle of rights, it will never have the same form as national citizenship and therefore will never completely replace national citizenship”.¹¹

Professor Niamh Nic Shuibhne (Edinburgh Law School) has [argued](#), on the other hand, that the CJEU’s developing case law on EU citizenship has a number of implied duties in it; these are particularly manifest in the area of free movement law, where the CJEU in recent years appears to suggest that mobile EU nationals have a duty to *integrate* and be *productive* members of the host State they live in. However, this raises a further point of contestation about EU citizenship as a status: it is commonly perceived as only a meaningful status for those EU citizens who move to another EU Member State, and to hold significantly less meaning for EU citizens who stay within their Member State of origin. This debate is explored in more detail below, when considering the merits of an EU citizenship status for UK nationals who remain in the UK, and thus will not reside in a ‘Member State’ post-Brexit.

Court of Justice opinions on EU citizenship

The Court of Justice of the EU (CJEU) has ruled in several cases on aspects of EU citizenship, but there is as yet¹² no case law specifically on any rights of citizens of a former EU Member State. Does CJEU case law shed any light on Brexit citizenship issues?

In [Grzelczyk](#) (20 September 2001) the CJEU said that Union citizenship was “destined to be the fundamental status of nationals of Member States”. This has been the basis for those who conclude that if EU citizenship is a “fundamental status” belonging to individuals, it cannot be removed from those individuals en masse against their will. Others disagree.

In [Huber](#), CJEU Advocate General Poiares Maduro [said](#) Union citizenship was not just a political statement, but a “legal concept which goes hand in hand with specific rights for Union citizens”.¹³ When the CJEU is asked about Union citizenship, he said its answer “has consistently been that this is matter for national law alone, albeit with the caveat that nationality law in the Member States must have ‘due regard’ for EU

⁹ Dr. Annette Schrauwen, Europa Instituut, Amsterdam Centre for International Law, Law Faculty, Universiteit van Amsterdam. Paper presented at conference “After the first 50 years: the future of European law and policy, “The Future of EU Citizenship: corrosion of national citizenship”, Birmingham, 2-4 July 2008, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1375413.

¹⁰ Schrauwen, *ibid*

¹¹ *Ibid*

¹² See section 3.4 for information on recent citizenship case in the context of Brexit.

¹³ [Opinion](#) of AG Poiares Maduro, Case C-524/06, Heinz Huber v Bundesrepublik Deutschland, 3 April 2008, para. 19

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law". What this means in practical terms has only very recently become clear.

Advocate General Maduro's [Opinion](#) in case C-135/08, *Janko Rottmann v Freistaat Bayern* (30 September 2009) provides the clearest analysis of the differences and dependencies between EU and national citizenship (paragraph 23), and what the limits of national law on citizenship are because of EU citizenship:

Any attempt at an answer presupposes a sound understanding of the relationship between the nationality of a Member State and Union citizenship. Those are two concepts which are both inextricably linked and independent. (29) Union citizenship assumes nationality of a Member State but it is also a legal and political concept independent of that of nationality. Nationality of a Member State not only provides access to enjoyment of the rights conferred by Community law; it also makes us citizens of the Union. European citizenship is more than a body of rights which, in themselves, could be granted even to those who do not possess it. It presupposes the existence of a political relationship between European citizens, although it is not a relationship of belonging to a people. [...] It is based on their mutual commitment to open their respective bodies politic to other European citizens and to construct a new form of civic and political allegiance on a European scale. It does not require the existence of a people, but is founded on the existence of a European political area from which rights and duties emerge. In so far as it does not imply the existence of a European people, citizenship is conceptually the product of a decoupling from nationality. As one author has observed, the radically innovative character of the concept of European citizenship lies in the fact that 'the Union belongs to, is composed of, citizens who by definition do not share the same nationality'. (30) On the contrary, by making nationality of a Member State a condition for being a European citizen, the Member States intended to show that this new form of citizenship does not put in question our first allegiance to our national bodies politic. In that way, that relationship with the nationality of the individual Member States constitutes recognition of the fact that there can exist (in fact, does exist) a citizenship which is not determined by nationality. That is the miracle of Union citizenship: it strengthens the ties between us and our States (in so far as we are European citizens precisely because we are nationals of our States) and, at the same time, it emancipates us from them (in so far as we are now citizens beyond our States). Access to European citizenship is gained through nationality of a Member State, which is regulated by national law, but, like any form of citizenship, it forms the basis of a new political area from which rights and duties emerge, which are laid down by Community law and do not depend on the State. [...] That is why, although it is true that nationality of a Member State is a precondition for access to Union citizenship, it is equally true that the body of rights and obligations associated with the latter cannot be limited in an unjustified manner by the former.

Could it be argued that a decision to invoke Article 50 TEU is subject to Rottmanesque judicial review?¹⁴ He argued that it would not be.

¹⁴ This was asked by Gareth Davies in [Union Citizenship – still Europeans' destiny after Brexit?](#) European Law blog, 7 July 2016

1.4 Can EU citizenship be lost?

By rejection?

Because EU citizenship is acquired automatically by virtue of being a national of an EU Member State, it is difficult in practical terms to reject it. An identity linked to EU citizenship could be rejected symbolically, but identity is a difficult concept and rights are probably easier to reject than identity. Rescinding an EU nationality and residing outside the EU might in practice remove EU citizenship but would presumably contradict the intention of someone wanting to reject *only* EU citizenship by also removing national citizenship.

By force?

Some have argued that the roughly 16 million people (48%) who voted to stay in the EU should not be forced against their will to give up their EU citizenship.

Long before Brexit became UK governmental policy, Clemens M. Rieder (University of Lancaster School of Law) explored the language of the EU Treaties on citizenship and the status of the individual in EU and public international law - or in what the EU Court of Justice called in 1963 a "new legal order of international law"¹⁵ - and the potential for tension between the international and EU law norms. He found:

What can be concluded is that the individual has a rather strong and a unique role in EU law compared to international law. This finding is also confirmed by the reasoning of the Court which does not consider EU law as an element of (traditional) international law. Member States accommodated this different approach by eventually introducing the concept of EU citizenship, which somehow crystallizes this development even if the legislative history shows a certain uneasiness with the concept of citizenship on the supranational level.¹⁶

He states that "[a]n obvious consequence of withdrawal from the European Union is a loss or change of the individual's status as an EU citizen". But in a section looking at whether the "involuntary loss of national citizenship can in fact be transferred from national citizenship to EU citizenship", he examines some US and other international cases (Czech and Slovak citizenship after Czechoslovakia was dissolved in January 1993), and concludes:

If one takes these principles out of the state context and applies them in the context of withdrawal from the European Union, what one would need to conclude is that a Member State (government) could not simply strip people of EU citizenship against their will. This, however, would mean that even if a majority of people in a referendum may be in favor of withdrawal from the European Union, a way would nevertheless need to be found to accommodate the right of individuals to retain EU citizenship if they wanted to.

¹⁵ [Van Gend & Loos v. Neth. Inland Revenue Admin](#), Case 26/62 [1963]

¹⁶ Fordham International Law Journal, Volume 37, Issue 1 [2013], [The Withdrawal Clause of the Lisbon Treaty in the Light of EU Citizenship \(Between Disintegration and Integration\)](#), pp 163-4

A theory he explores and appears to broadly support is that the Member States were not “forced to confer the status of EU citizenship on their citizens but once they have [...] they cannot simply withdraw this status”, and that “citizenship cannot simply be taken away through a majority decision, especially against the will of the individual”.¹⁷ The link between the citizen and the Union, he argues, would only cease to exist if the EU itself ceased to exist.

Does international law clarify?

‘EU citizenship’ does not fall within the terms of the United Nation’s [Universal Declaration of Human Rights](#), which states in Article 15:

- 1) Everyone has the right to a nationality.
- 2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

The main concern of the UN is that individuals should not be made stateless – “individuals who are not considered citizens or nationals under the operation of the laws of any country”.¹⁸ Statelessness results from the loss of status as a national of a state, but the EU is not a state so its citizens cannot be made stateless by a Member’s withdrawal.

Public international law is the basis for arguments asserting ‘acquired’ or ‘vested’ rights under Article 70(1)(b) of the [Vienna Convention on the Law of Treaties](#) (VCLT). But acquired rights under the VCLT apply only to the rights and obligations of states, not individuals. So in the absence of a withdrawal agreement guaranteeing citizens’ rights, this provision cannot be relied upon to protect rights under EU law that will be lost as a result of Brexit.¹⁹ However, the Brexit negotiators agreed that the rights of UK citizens living in other EU States and of EU citizens living in the UK should be largely guaranteed, and the March 2018 [draft withdrawal agreement](#) contains provisions on citizens’ rights in Part II.²⁰

Professor Mary Kaldor (London School of Economics) cites the UN [International Covenant on Civil and Political Rights \(General Comment No 26](#) “on issues relating to the continuity of obligations to the International Covenant on Civil and Political Rights”), which protects the rights of people living in the territory of the State party even if it seeks to “divest them of the rights guaranteed by the Covenant”. She maintains that “[w]hile the comment applies to the Covenant the principle applies more broadly”²¹ and that rights ‘acquired’ over time cannot be taken away.

¹⁷ Fordham International Law Journal, *ibid*, p 172

¹⁸ Article 1 of UN [1954 Convention relating to the Status of Stateless Persons](#)

¹⁹ See Chapter 6: [The protection of EU rights as acquired rights](#), Lords EU Committee, Brexit: acquired rights, 10th Report of Session 2016-17, 14 December 2016

²⁰ See Commons Library Briefing 8269, [Brexit: the draft withdrawal agreement](#), 26 March 2018.

²¹ Another Europe, [The case for individual associate citizenship of the European Union](#), 6 March 2017

Patricia Mindus (Uppsala University), also looking to international law for clarification, comments that the form of mass involuntary loss of citizenship that Brexit will create “does not create statelessness and is likely to be tolerated under international law”.²² But she is intrigued by the issue of “whether the loss of Union citizenship entailed by Brexit might demonstrate arbitrary features in its being unchallengeable”,²³ suggesting:

... we would need to conclude that Article 50 introduces surreptitiously an unchallengeable new ground for loss of the status. It cannot be ruled out that, in keeping with international law, such an unchallengeable provision of loss might, after all, qualify as arbitrary.²⁴

Mindus disagrees with “the commonly made assumption that entitlements vanish when access criteria are no longer fulfilled”.²⁵ She does not believe UK nationals exercising free movement rights under the Treaties would have ‘acquired rights’ under the Vienna Convention, but “the material implication need not be that rights of citizens disappear”. She goes on to explain how “[t]he bi-dimensionality of citizenship shows gaps and asymmetries that arise between having access to the status and enjoying the rights connected to it”.²⁶

1.5 No EU membership, no EU citizenship?

The majority view

The Treaties say no

The majority view in the EU and among constitutional and legal experts is that the nationals of an EU State that leaves the EU in accordance with Article 50 TEU cannot retain their full EU citizenship rights – notwithstanding provisions of a withdrawal agreement on citizens’ rights.

The general rationale is that the EU Treaties and EU law which provide for EU citizenship also make clear that EU citizenship rights are not absolute, but subject to conditions and limitations. The last paragraph of Article 20 TFEU asserts that the rights of citizenship “shall be exercised in accordance with the conditions and limits defined by the Treaties and by the measures adopted thereunder”. In other words, EU citizenship is defined in the TEU and TFEU, which apply only to EU Member States (and to some extent to their territories).

EU citizenship is acquired automatically by virtue of being a national of an EU Member State (Article 20 TFEU: “Every person holding the nationality of a Member State shall be a citizen of the Union”), so if the UK leaves the EU, it follows that UK nationals – unless they have dual nationality - will no longer be citizens of the EU.

²² Mindus, P, European Citizenship after Brexit (September 29, 2016). Available at SSRN: <https://ssrn.com/abstract=2842500> or <http://dx.doi.org/10.2139/ssrn.2842500>

²³ Mindus, *ibid* p. 17

²⁴ *Ibid*, p.23

²⁵ *Ibid*, p.6

²⁶ *Ibid*, p.9

A logical consequence of triggering Article 50

Because Article 50(3) TEU states that after two years or the conclusion of a withdrawal agreement, “[t]he Treaties shall cease to apply” to a withdrawing State, Article 20 TFEU and EU citizenship must cease to apply automatically in the UK, notwithstanding any transitional arrangements agreed by the negotiating parties.

Jean-Claude Piris, former Director General of the Council’s Legal Service, said in 2015 that EU withdrawal would be incompatible with continued EU citizenship:

I would not think that one could build a new legal theory, according to which “acquired rights” would remain valid for millions of individuals ... who, despite having lost their EU citizenship, would nevertheless keep its advantages for ever (including the right of movement from and to all EU Member States? Including the right to vote and to be a candidate in the European Parliament?). Such a theory would not have any legal support in the Treaties and would lead to absurd consequences.²⁷

The question is also raised of whether EU citizenship can exist separately from national citizenship.²⁸ If it can, the argument for UK nationals being able to keep it after Brexit might be strengthened. Professor Dimitry Kochenov (University of Groningen) concludes that EU citizenship is “clearly *not* an autonomous status at the level of acquisition”²⁹ and argues that its loss is inherent in and a logical consequence of triggering Article 50:

There is no persuasive argument which would permit this legal status to function as a legal pretext to deprive Article 50 TEU of its *effet utile*³⁰ without depriving the people of the withdrawing Member State from the possibility of deciding, by democratic means, that they no longer want EU membership. EU citizenship will go with the rest of the package. Withdrawal means leaving the ambit of the law of the Union and, in this sense, it will be no different from British Honduras leaving the UK or Java leaving the Netherlands.³¹

Other views

EU citizenship is a ‘fundamental right’; its loss a breach of human rights

Is the loss of EU citizenship and its associated rights for UK nationals who voted to remain a disproportionate and unjust consequence of the UK’s withdrawal from the EU – in other words, is it a breach of their human rights?

²⁷ Robert Schuman Foundation, European issues n°355, 5 May 2015. [Should the UK withdraw from the EU: legal aspects and effects of possible options.](#)

²⁸ E.g. Dora Kostakopoulou, [European Union Citizenship and Member State Nationality: Updating or Upgrading the Link?](#) In 'Has the ECJ Challenged Member State Sovereignty in Nationality Law?', Edited by Jo Shaw, EUI Working Paper RSCAS 2011/62, January 2011

²⁹ Dimitry Kochenov, EU Citizenship and Withdrawals from the Union. In *Secession from a Member State and Withdrawal from the European Union. Troubled Membership*, edited by Carlos Closa, 2017

³⁰ Applying an interpretative technique to expand and entrench the limits of EU law.

³¹ Dimitry Kochenov, *ibid.*

Some have argued against the view that EU citizenship is intrinsically linked to the state of nationality being an EU Member State, maintaining that it is a fundamental human right for those who want to keep it. A [post](#) by Volker Roeben et al (University of Dundee) commented:

First, Union Citizenship is not just a status but a fundamental right. Any interference with it is thus subject to the principle of proportionality and cannot affect its core. Second, deciding on the acquisition and loss of Union Citizenship is not a right but a competence of the Member States. This competence is not unlimited. Third, Union Citizenship is autonomous from the nationality of a Member State. Third-Country nationals may continue to hold the rights of Union Citizenship provided a sufficiently close link exists with the EU. Fourth and finally, the EU is obligated to ensure legal certainty for citizenships beyond the end of a State's membership in the EU, and the Lisbon Treaty confers the requisite competence in line with the international law of treaties.³²

But declaring citizenship to be a fundamental status does not mean it is a fundamental right.

Professor Gareth Davies (Vrije Universiteit Amsterdam) has argued that the CJEU could, if asked, find that it would be disproportionate to deprive the UK population of its rights as EU citizens through the process of withdrawal.³³ But this would appear to question the UK's own constitutional procedures and the Government's decision to honour the (non-binding) 2016 referendum result. As Stephen Coutts (Dublin City University) points out, arguing that EU law could "protect" the rights of individuals in the UK who are being forced to leave the EU and denied Union citizenship against their will "would amount to an argument that the United Kingdom acting under Article 50 TEU is not competent as a democratic political community to bind its own minority".³⁴

UK remainers exercising their free movement rights have argued, on the other hand, that the referendum, in which they could not vote if they had lived abroad for more than 15 years, was undemocratic.

The CJEU is unlikely to want to intervene in such matters, and it is doubtful that its jurisdiction covers domestic nationality and electoral law beyond elections to the European Parliament³⁵ or the outright 'loss' of any nationality that would grant EU citizenship, as was at risk in *Rottmann*. Dr Ronan McCrea (University College London) thought the CJEU had actually "backed away" from ruling that EU citizenship has

³² Roeben, Volker, Bush, Keith, Minnerop-Röben, Petra, Snell, Jukka and Telles, Pedro, 'Protection from Exclusion: A Reassessment of Union Citizenship in the Time of Brexit' (23 February 2018). Available at SSRN: <https://ssrn.com/abstract=> or <http://dx.doi.org/10.2139/ssrn.3130823>. See also The New European, [Should Britons be able to keep their European citizenship after Brexit?](#) 4 March 2018.

³³ G. Davies, [Union citizenship – still Europeans' destiny after Brexit?](#) 7 July 2016.

³⁴ S. Coutts, [Brexit and Citizenship: The Past, Present and Future of Free Movement](#), 12 September 2016.

³⁵ See box 1 below.

become the “fundamental status” of nationals of Member States, and that “even if a proportionality analysis were to be engaged upon, the need to defer to a majority decision in a national referendum would surely weigh heavily with the Court”.³⁶

Box 1: The Court of Justice and Member States’ constitutional requirements

The EU Court has been reluctant to rule against Member States’ internal administrative procedures that are based on their constitutional traditions. An example is [Case C-145/04 Spain v UK](#) in which Spain complained that the UK had no right to grant EP voting rights to Commonwealth citizens residing in Gibraltar but not having citizenship of the EU. The CJEU refused to criticize the UK’s decision to grant the voting rights, which it recalled “is regarded as one of the constitutional traditions of the United Kingdom” and that a “link does not exist, in all Member States, between the legitimacy of public power and nationality. It is appropriate to take account of different approaches, such as that resulting from the constitutional tradition of the United Kingdom”. The Court took a ‘light touch’ approach to the domestic constitutional requirements, suggesting that whatever interpretation a Member State makes of its own constitutional requirements, the Court would nod through.³⁷

But when faced with a contradictory human rights requirement, the CJEU, while not condemning the UK, ruled that the failure to allow citizens of Gibraltar to vote in EP elections ([Matthews v UK](#)) breached the right to vote as set out in the European Convention on Human Rights and needed to be remedied.

In [written evidence](#) to the Lords EU Justice Sub-Committee in November 2017, Caoilfhionn Gallagher QC and Susie Alegre of Doughty Street Chambers argued that the loss of EU citizenship was a human rights issue under the European Convention on Human rights:

Many British citizens have spent their entire lives as EU citizens. They identify strongly with both the British and European aspects of their social identity. For some there will be a profound sense of loss at the removal of their EU citizenship while for others, it may also have significant practical implications for their professional and private lives. As Susie Alegre said in her evidence to the Inquiry on Acquired Rights, the level of European integration over the past half century means that EU citizenship for some British citizens is a core part of their social identity that arguably brings it within the general scope and ambit of Article 8 ECHR, the right to private and family life. Losing EU citizenship, therefore, is a human rights issue.

The authors said the EU and individual Member States would “need to explore ways to ensure that the way they deal with British former EU citizens in the future is compliant with their international human rights obligations”, and that this was to some extent “a separate issue to the negotiations on Brexit and should not require reciprocity”.

The UK Government said in its [response](#) to the Lords EU Committee report on [Brexit: acquired rights](#) that EU citizens should not have to rely solely on the European Convention on Human Rights “to carry on their

³⁶ R. McCrea, [Brexit EU Citizenship Rights of UK Nationals and the Court of Justice](#), UK Constitutional Law Blog, 8 February 2018

³⁷ Richard Lang, [The need for Parliament’s consent to trigger Art 50 is a matter of EU Law](#), Halsbury’s Law Exchange, 16 August 2016

lives as before”, so it would be seeking to negotiate reciprocal rights for EU citizens in the UK and UK citizens in the EU after Brexit. The UK’s proposals for citizens’ rights in the withdrawal agreement have been more generous in some respects than the EU’s.³⁸

Rights as ‘former’ EU citizens?

It has been suggested that UK citizens ought to retain their citizenship rights as ‘former EU citizens’, which would be a different status from that of Third Country Nationals (TCNs). Eleanor Spaventa (Università Bocconi) believes that “UK citizens in the EU-27 should at the point of Brexit be considered as ‘former EU citizens’ and maintain most of the rights provided for by Directive 2004/38/EC (the Citizens Directive), which should be applied by analogy”. She elaborates on this “new category” of citizens:

The second possibility is that UK citizens are protected, at least to a certain extent, by their former EU citizenship status. This is entirely consistent with the Union citizenship discourse, and relies on an analogical interpretation of EU secondary legislation. In particular, it recognises that UK citizens exercised their right to move as Union citizens and that therefore their situation cannot be equated to that of a third country national who has never exercised Treaty/EU law rights.

In this respect we should look at the way EU law treats those whose circumstances have changed. In particular, as mentioned above family members of migrant Union citizens are protected by the Citizenship Directive (2004/38/EC), even if they are third country nationals.

The Citizenship Directive goes beyond recognising a derived right to reside for the TCN spouse of a migrant Union citizen. It also recognises that the family member must be protected in her/his own right. Thus, pursuant to the Citizenship Directive, a third country national spouse is treated in the same way as a Union citizen even if her/his family situation changes because of divorce, annulment of the marriage or termination of the registered partnership.⁵⁸ The right to reside of the TCN spouse also continues in the event of the death of the migrant Union citizen or should the Union citizen leave the territory of the host state.⁵⁹ In those circumstances then, the right of the TCN is transformed from a right derived from their partner’s right to move, to an individual right accruing to the TCN her/himself.

The rationale behind this regime is that a change in family circumstances, sometimes within the control of the parties and sometimes entirely outside their control, should not be material to the enjoyment of rights conferred by the Citizenship Directive. After all, if the TCN spouse has moved with a Union citizen, therefore exercising a derived right conferred directly by Union law, she/he should be protected also in the event of changes in her/his family circumstances.³⁹

³⁸ See Commons Briefing Paper 8269, [Brexit: the draft withdrawal agreement](#), 23 March 2018.

³⁹ Professor Eleanor Spaventa, [The impact of Brexit in relation to the right to petition and on the competences, responsibilities and activities of the Committee on Petitions](#). Study, Policy Department C: Citizens’ Rights and Constitutional Affairs, European Parliament, June 2017. Pages 42-45 provide a useful table showing the effects of Brexit on EU citizens’ rights.

Neither the EU nor the UK has commented publicly on any proposal to establish 'derived' or 'former' citizenship rights for the UK; the draft Withdrawal Agreement appears to suggest, however, that they are looking to retain the *rights* of EU citizenship rather than the *status*.

1.6 The draft Withdrawal Agreement

The draft Withdrawal Agreement (WA) of March 2018 does not provide for a continuation of Union Citizenship as provided by Articles 20-25 TFEU. But it does respond to concerns about the rights of EU citizens already living in the UK and UK citizens already living in other EU Member States at the time of exit. The draft WA includes a number of citizens' rights provisions (Articles 8 -35) which will apply during the transition period and in some cases beyond (i.e. for the lifetime of the citizens concerned). These rights are not discussed in this paper but are described in chapter 3 of Commons Briefing Paper 8269, [Brexit: the draft withdrawal agreement](#), 26 March 2018.

[New areas of agreement](#) were announced on 19 June.⁴⁰ Most of the citizens' rights provisions are now agreed subject to technical legal revision.

Although the WA can include elements of EU citizenship that would work for non-EU citizens, other aspects of EU citizenship will not be possible for a country outside the EU with no institutional representation - such as the right to stand for and vote in elections to the EP.

1.7 Examples of citizenship arrangements

European Economic Area (EEA)

The EEA Agreement does not include the Union citizenship provisions in the EU Treaties, but the EEA States have implemented the 'citizenship directive'.⁴¹ But as Professor Carl Baudenbacher, former President of the EFTA Court, [told](#) the Exiting the EU Committee, "the economic rights derived from citizenship have, as a matter of principle, been taken over but not the political rights". A [Joint Declaration](#) states that Union citizenship and immigration law are not part of the EEA Agreement.⁴²

Northern Ireland

Citizens of Northern Ireland have a "permanent birth right" under the Good Friday Agreement to claim Irish nationality if they wish (they can choose to be British, Irish or both), which will allow them to retain EU citizenship after Brexit. This guarantee "would not be affected by any future change in the status of Northern Ireland" (Article 1(vi)).

⁴⁰ See Commons Briefing Paper 8339, [Brexit: Negotiations Update \(March-June 2018\)](#) 20 June 2018.

⁴¹ See [oral evidence](#) by Professor Alla Pozdnakova (Law Faculty, University of Oslo) to Exiting the EU Committee, 7 February 2018.

⁴² For an interesting account of EU citizenship in Norway, see [Legal study on Norway's obligations under the EU Citizenship Directive 2004/38/EC](#), Advokatfirmaet Simonsen Vogt Wiig AS, 4 January 2016 (With minor revisions as of 9 February 2016

The draft WA Protocol on Ireland/Northern Ireland recognises that Irish citizens in Northern Ireland will continue to enjoy the benefits of EU citizenship

... and that this Protocol should respect and be without prejudice to the rights, opportunities and identity that come with citizenship of the Union for the people of Northern Ireland who choose to assert their right to Irish citizenship as defined in Annex 2 of the British-Irish Agreement "Declaration on the Provisions of Paragraph (vi) of Article 1 in Relation to Citizenship";

The UK Government is committed to maintaining this status for Northern Ireland citizens: "As long as Ireland remains a member of the EU, Irish citizenship also confers EU citizenship, with all the rights that go with this. This is as true for the people of Northern Ireland who are Irish citizens – or who hold both British and Irish citizenship – as it is for Irish citizens in Ireland".⁴³

In the June 2016 referendum, Northern Ireland voted by 56% to 44% to stay in the EU. According to the BBC, the number of UK applications for Irish citizenship rose from 51 in 2014 to 529 in 2017, and this figure "does not include new Irish passport applications from the much larger number of people who already had entitlement to Irish citizenship, due for example to being born in Northern Ireland".⁴⁴ If this trend continues, a significant portion of UK residents will actually hold both a UK nationality and Irish nationality (and thus EU citizenship).

This raises issues such as whether the CJEU would have jurisdiction to rule in alleged breaches of EU citizenship rights in Northern Ireland, and whether N.I. citizens should have the right to be represented and stand in the EP. Caoilfhionn Gallagher QC and Katie O'Byrne (Doughty Street Chambers) examine the case for a 'special status' for a Northern Ireland in which a large proportion of the population had Irish citizenship, without which there would be "a somewhat bizarre situation whereby a non-EU territory would be democratically represented in EU institutions".⁴⁵ They consider some potential difficulties in a 'special status':

It is not entirely clear, however, what this means for rights beyond citizenship that are currently protected by EU law. Differential protection of human rights as between citizens of Ireland and the UK, and / or between citizens of Northern Ireland and the remainder of the UK, is likely to stir up enmities in relation to identity and lack of equivalence.⁴⁶

More generally, not *all* EU citizenship rights would be effective for those born in Northern Ireland and thus holding EU citizenship as a status; as these nationals will not ordinarily have 'exercised movement rights', the far more limited scope of EU citizenship rights relating to electoral and

⁴³ HM Government, Northern Ireland and Ireland Position Paper (2017)

⁴⁴ BBC News, [Surge in Britons getting another EU nationality](#), 30 June 2018

⁴⁵ [Report on how designated special status for Northern Ireland within the EU can be delivered](#). An independent legal opinion commissioned by the European United Left/Nordic Green Left (GUE/NGL) Group of the European Parliament, 16 October 2017

⁴⁶ Ibid

petitioning rights are the only ones likely to be effective for such 'static' Irish nationals. They will thus find themselves in an 'in-between' status with largely passive rights, much like other EU nationals resident outside the EU.⁴⁷

Greenland

Some commentators have cited Greenland as a precedent for continuing certain EU benefits after withdrawal and for a kind of associate membership of the EU. Greenland is an autonomous territory within the Kingdom of Denmark and is 'associated to' the EU.

Greenland joined the then EEC with Denmark in 1973 but its status under the EU Treaties changed after it gained autonomy from Denmark in 1979 and held a referendum in 1982 to leave the then European Community. Greenland withdrew from the EC and the [Greenland Treaty](#) came into force in 1985. As part of an EU Member State, Greenland became 'associated to' the EC/EU as one of the Overseas Countries and Territories (OCTs), but Greenland's citizens are also EU citizens within the meaning of the EU Treaties and Danish nationality law.⁴⁸ Greenland residents can choose between a Greenlandic passport with 'Kalaallit Nunaat' (Greenland) written on it and a Danish passport.

But, as Kochenov argues, Greenland did not actually leave the EU; it changed its status in relation to the EU, becoming an Overseas Country or Territory in the sense of Annex II of the EU Treaties, which means that Part Four TFEU (Association of OCTs) and Part Two TFEU (non-discrimination and EU citizenship), as well as other TFEU provisions apply there.⁴⁹ So Greenland's 'departure' was, rather, a "reduction of the territorial jurisdiction of the Treaties".⁵⁰

Under the 2001 Overseas Association Decision (OAD), the OCTs are not part of the internal market as such. With respect to goods, services and capital, the OAD provides for a framework, but with regard to free movement of persons, Articles 202 and 203 TFEU envisage EU laws, which have so far not been adopted. In practice there is probably no need for these laws, as EU law on citizenship rights will apply to them, and anyone who wanted to exercise EU rights could do so by getting a Danish passport.

In its Opinion in February 1982 on Greenland's 'withdrawal', the Commission said:

Retention of vested rights

Provision should be made for appropriate measures to protect companies and persons who have exercised the right of establishment as well as Community workers employed in

⁴⁷ Case C-60/00 [Mary Carpenter v Secretary of State for the Home Department](#) (11 July 2002)

⁴⁸ Unlike those of the Faroe Islands who have Danish citizenship but are outside the EU and are explicitly excluded from EU citizenship under the terms of the Danish Accession Treaty.

⁴⁹ Dimitry Kochenov, LSE 'Europe in Question' Discussion Paper Series, [EU Citizenship and Withdrawals from the Union: How Inevitable Is the Radical Downgrading of Rights?](#) June 2016

⁵⁰ Martin Howe QC, [The withdrawal of the UK from the European Union. Analysis of potential financial liabilities and of jurisdiction to enforce them](#), 24 May 2017

Greenland. The extremely small number of persons affected and the case-law of the Court of Justice that has already been established in favour of the retention of pension rights acquired by workers during periods of employment in a territory which has subsequently ceased to belong to the Community give no reason to suppose that there will be any major difficulties in this area, even if the future status of Greenland were to rule out the principle of free movement. It would, however, be preferable to retain the substance of the Community rules, at least in respect of Community workers employed in Greenland at the time of withdrawal.⁵¹

⁵¹ Bulletin of the European Communities, Supplement 1/83. [Status of Greenland Commission opinion](#), Commission communication presented to the Council on 2 February 1983

2. EU 'Associate Citizenship'?

Summary

An 'associate' EU citizenship has been suggested and debated by the European Parliament and the UK Parliament. This status does not exist at present and would almost certainly require Treaty amendment. There is little detail as to how this would work, but proponents have suggested it might include a written oath, a fee or a tax. A campaign for a 'green card' system has also attracted support.

Such proposals have not been taken up by the Brexit negotiators, although some citizens' rights provisions are included in the draft Withdrawal Agreement.

2.1 Is there 'associate citizenship' of the EU?

There has been a suggestion that UK citizens could retain their EU citizenship after the UK leaves the EU by means of a form of an 'associate(d) citizenship', possibly on the payment of a fee or tax.

Currently, 'associate(d) citizenship' of the EU in this sense does not exist, so a new status of 'associate(d) citizenship' could probably only be introduced by amending the EU Treaties, which would require the unanimous approval of all EU Member States. However, some believe associate citizenship could be granted without Treaty change.

2.2 Report on proposal for 'associate' citizenship

A report commissioned by Plaid Cymru MEP Jill Evans and published in July 2017⁵² looked at an 'associate' EU citizenship. The report's findings are summarised as follows:

First, the key question in relation to providing this protection is whether Union Citizenship continues post-Brexit, or whether Brexit extinguishes Citizenship. The report considers that Continuity Union Citizenship ("Continuity") is the more convincing interpretation of European Union law and international law as it stands, but it also considers the alternative of creating the new status of Associate Union Citizenship of the European Union for British nationals ("Associate Union Citizenship") with related rights.

Second, the report identifies two possible means of realising these models: i) legislation by the Union to clarify Continuity and ii) the Withdrawal Agreement between the EU and the UK enshrining Associate Union Citizenship or Continuity.

Third, it is established that no revision of the Founding Treaties is needed, irrespective of the model followed.

Fourth, UK citizenship law is highly flexible in line with the principle that individuals ought not to be stripped of citizenship against their will.

⁵² [The Feasibility of associate EU citizenship for UK citizens post-Brexit](#), Prof Volker Roeben, Prof Jukka Snell, Dr Petra Minnerop, Dr Pedro Telles and Mr Keith Bush QC, Swansea University.

Fifth, devolution in the UK entails that Wales may have a considerable responsibility to protect Union Citizenship rights post-Brexit.

It is difficult to see how EU Treaty change would not be needed for a Treaty-based rights such as citizenship.

2.3 European Parliament proposes 'associate' citizenship status

EP Constitutional Affairs Committee report

On 10 December 2016, the European Parliament's Brexit coordinator, leader of the Alliance of Liberals and Democrats for Europe Guy Verhofstadt, considered a form of EU 'associate citizenship' status that would allow individuals to "keep free movement to live and work across the EU, as well as a vote in European Parliament elections".⁵³

In an own initiative [draft report](#) of July 2016 of the EP's Committee on Constitutional Affairs on "Possible evolutions of and adjustments to the current institutional set-up of the European Union", Guy Verhofstadt (rapporteur) promoted 'associate citizenship' status in preference to the "current disorderly 'variable geometry', i.e. 'l'Europe à la carte', [...] the disruptive practice of opt-outs, opt-ins and exceptions", recommending that:

... instead of these multiple derogations, a type of 'associate status' could be proposed to those states in the periphery that only want to participate on the sideline, i.e. in some specific Union policies; this status should be accompanied by obligations corresponding to the associated rights;

The proposed status could, the draft report says, be applied to the UK's withdrawal from the European Union:

11. Notes that this new type of 'associate status' could also be one of the possible outcomes to respect the will of the majority of the citizens of the United Kingdom to leave the EU; stresses that this wish must be respected, given that the withdrawal of the United Kingdom, as one of the larger Member States, and as the largest non-euro-area member, affects the strength and the institutional balance of the Union – a new situation that adds to the need for revision of the Treaties;

The draft maintained the "founding fathers of the Union had already envisaged a type of 'associate status'". But during the Brexit negotiations, there has been no indication of EU efforts to introduce such a status.

The Goerens amendment

In November 2016 the Luxembourg Liberal Democrat MEP Charles Goerens proposed [Amendment 882](#) to paragraph 37 of the AFCO report, which read:

37a. Advocates to insert in the Treaties a European associate citizenship for those who feel and wish to be part of the European project but are nationals of a former Member State; offers these associate citizens the rights of freedom of movement and to

⁵³ [Independent, 9 December 2016.](#)

reside on its territory as well as being represented in the Parliament through a vote in the European elections on the European lists;

Charles Goerens' [blog](#) provided further information on the purpose of and rationale for the amendment:

This associate membership should provide rights such as the freedom of movement and the right to reside in the EU Member States. Following the reciprocal principle of 'no taxation without representation', these associate citizens should pay an annual membership fee directly into the EU budget. In return, EU associate citizens will be able to stand and vote in the European elections on trans-national European lists.

And:

48% of British voters wished to remain European citizens with all the advantages that this brings. The EU should facilitate associate voluntary EU citizenship for those who, against their will, are being stripped of their European identity. Individual EU associate citizenship could provide a practical solution for UK citizens aggrieved by Brexit.⁵⁴

Goerens withdrew the amendment before the vote was taken, but the EP [motion for a resolution](#) on UK withdrawal, 29 March 2017, implied in paragraph 27 that the EP supported a form of continued citizenship for those who did not want to leave the EU:

[The EP] Takes note that many citizens in the United Kingdom have expressed strong opposition to losing the rights they currently enjoy pursuant to Article 20 TFEU; proposes that the EU-27 examine how to mitigate this within the limits of Union primary law whilst fully respecting the principles of reciprocity, equity, symmetry and non-discrimination;

What does "mitigate" the loss of rights mean in this context? Hywel Williams asked Guy Verhofstadt this question on 20 June in [oral evidence](#) to the Exiting the EU Committee. Mr Verhofstadt spoke about the "idea of the possibility for UK citizens to retain their EU citizenship on an individual basis", and referred to [a case launched by UK nationals before the Dutch courts on whether or not EU citizenship disappears following Member State withdrawal](#) (See section 3.4 below). This case was not ultimately referred to the CJEU as at the time, no Member State had actually left the EU – and hypothetical questions cannot be referred to the CJEU. However, commentators believe the CJEU will hear this dispute at some point when the UK's withdrawal is 'completed'. Verhofstadt clarified that his proposal would apply to UK citizens in general and not just to those living in another EU Member State – "those who have EU citizenship now and normally should lose it at Brexit day".

Mr Verhofstadt has also called for the UK Government to be "open" to a plan to help British people who want to retain EU citizenship after the UK leaves. Writing in The Independent on 8 April 2017, he [said](#):

⁵⁴ See also article by Charles Goerens, [If you don't want to leave the EU, you don't have to – become an associate citizen](#), The Independent, 14 November 2016.

After much debate within the European Parliament, the parliament's resolution also notes that many citizens of the UK have expressed strong opposition to losing the rights they currently enjoy as European Union citizens and "proposes that the EU 27 examine how to mitigate this within the limits of Union primary law". I fought hard in the parliament for this provision to be maintained and hope in the coming months to continue to push for such an offer from the EU to British Europeans.

David Davis has [said](#) he is open to discussing the idea of an associate citizenship.

I have spoken briefly to Guy Verhofstadt about [associate citizenship], although not at great length, and I will be interested to hear from him what is being proposed. Of course we will listen to anything of this nature. The aim of this exercise is to be good for Europe and good for Britain, which means good for the citizens of Europe and Britain.⁵⁵

How would this status work in practice?

Asked how this kind of citizenship might be implemented, Mr Goerens envisaged that "prospective applicants would have to sign a statement saying that they adhere to the European idea and fundamental European values".⁵⁶

Exactly how this would work in practice is not clear, although Professor Mary Kaldor has suggested that a membership fee "should be a progressive payment, say 1p on the pound, with a low income threshold below which citizenship is free".⁵⁷

[EurActiv](#) (3 November 2017) commented on some potential difficulties in implementing the proposed new status:

While the idea behind associate citizenship is laudable, rolling it out would not be easy as it would require a bespoke arrangement touching on both EU and UK citizens' rights.

Important details such as who would pay for the scheme and how the EU would manage non-reciprocal free movement with people from a non-member state will take some serious ironing out.

Not only would such a deal require treaty change agreed unanimously by the EU27 but London would have to agree too. This means – presumably – that it would have to be written into the final Brexit deal alongside the chapters on citizens' rights.

Professor Kaldor also considers whether associate citizenship would be reciprocal – at which point it would look like free movement, which is a UK Government red line: "it seems unlikely that were associate citizenship to be offered to UK citizens, the UK government would object. But this would change if it were linked to freedom of movement as it would have to be to be reciprocal".⁵⁸

⁵⁵ Reply to a question from Jeremy Lefroy, 2 November 2017 c974.

⁵⁶ EurActiv, updated 30 March 2017, [Luxembourg MEP: Associate citizenship for Brits is 'an offer, not an obligation'](#)

⁵⁷ Another Europe, [The case for individual associate citizenship of the European Union](#), 6 March 2017

⁵⁸ Kaldor, *ibid*

2.4 Compatible with the EU Treaties?

Based on the July 2017 report by Roeben et al,⁵⁹ Jill Evans MEP concluded that “an associate citizenship could be possible without treaty change”,⁶⁰ but most experts disagree. Martijn van den Brink (Max Planck Institute, Göttingen) and Dimitry Kochenov (University of Groningen) have set out on why they believe associate membership would be incompatible with the EU Treaties:

For a start, it should be evident that an associate EU citizenship status is incompatible with the Treaties. Several proponents suggest differently, however, most prominently on the ground that the Court has said that EU citizenship ‘[is destined to be the fundamental status of nationals of the Member States](#)’. But, of course, EU citizenship has never been fundamental in this sense; it was never meant to live a life independently of Member State nationalities. The Treaties are crystal clear in that regard: EU citizenship is contingent on and ‘additional to’ Member State nationality (Art. 20 TFEU). For similar reasons, we reject the idea that stripping Union citizens of their rights would contravene the principle of the [full effectiveness of EU law](#). Such a deprivation of rights can be prevented only by detaching EU citizenship from the nationalities of the Member States or by disentitling Member States to withdraw from the Union. Both options would undermine the full effectiveness of the Treaties, which requires that withdrawal under Article 50 TFEU remains possible and EU citizenship is lost, per Article 20 TFEU, for the nationals of the withdrawing state.⁶¹

The authors also reject the proposed status on democratic grounds:

In addition to these black letter considerations, we also reject the idea of associate EU citizenship for democratic reasons. [Advocates of associate EU citizenship](#) fear majority tyranny and seek to prevent ‘the unilateral erasure of [EU citizenship] by a transient and slim majority in the United Kingdom’. We offer two arguments in response. For a start, proponents of associate EU citizenship take such extreme positions that they ostensibly reject principles of democratic self-government altogether. For [Dawson and Augenstein](#), for example, it is unclear why ‘a decision of the UK government should bind those UK nationals who wish to retain their European citizenship’. By putting into question whether the UK can bind its own minority, and (seemingly) suggesting that the political decision not to be a member of the EU anymore is justifiable only to those citizens who have consented to it, they appear to reject democratic majoritarian principles (see also [Coutts](#)). Secondly, the fear that the minority of UK citizens will suffer from majority tyranny is exaggerated, as the UK and EU have both expressed the intention to offer substantial safeguards to those who exercised free movement rights previously (see Article 32 of the [Draft Withdrawal Agreement](#)).

Proponents of associate EU citizenship are also remarkably quiet about processes of democratic decision-making within the EU. First, associate EU citizens will not enjoy voting rights in national

⁵⁹ [The Feasibility of associate EU citizenship for UK citizens post-Brexit](#), Prof Volker Roeben, Prof Jukka Snell, Dr Petra Minnerop, Dr Pedro Telles and Mr Keith Bush QC, Swansea University.

⁶⁰ Foreword by Jill Evans MEP (PC)

⁶¹ DCU Brexit Institute, [A Critical Perspective on “Associate EU Citizenship”](#), Martijn van den Brink and Dimitry Kochenov, 28 May 2018

elections, by virtue of the mere fact that they do not enjoy the nationality of a Member State. Hence, associate EU citizens will be excluded from the EU's indirect channels of political participation. Secondly, if all UK nationals, including those resident within the UK, could acquire associate EU citizenship status, it seems exceptionally difficult to guarantee their right to vote in elections to the European Parliament. These issues certainly deserve more attention than those advocating for associate EU citizenship have given it thus far.

Their final argument is that "associate EU citizenship is contrary to the EU's interests, as it fails to respect reciprocity in future relations with the UK":

The EU should hold firm on the demand of reciprocity during negotiations in order to incentivise the UK to offer a favourable free movement regime for EU citizens. A reciprocal regime is also what fairness requires, as otherwise the nationals of remaining EU Member States could legitimately wonder why UK citizens may be conferred more substantive rights than they enjoy under UK law. The counter-argument offered by [Kostakopoulou](#) is that UK nationals and EU citizens should not be the object of political negotiations. That, however, is not nearly as self-evident as she would want to make us believe. For example, if the majority of the Swiss population in a referendum decides that free movement with the EU should be limited, threatening thereby to violate its agreement with the EU, we also think normally that the EU can reconsider its position towards Swiss nationals and terminate their rights. The EU makes these issues of political discussion with the purpose of protecting its own citizens.

2.5 UK parliamentary debate on associate citizenship

Several Welsh and Scottish MPs [debated](#) associate citizenship on 7 March 2018 on a motion tabled by Plaid Cymru (PC) MP Liz Saville Roberts. The motion was:

That this House supports the maintenance of European Union citizenship rights for Welsh, Scottish, Northern Irish and English citizens; notes that the range of rights and protections afforded to individuals as European Union citizens are integral to a person's European identity; further notes that many of those rights are closely linked to the UK's membership of the Single Market; and calls on the UK Government to ensure that the UK's membership of the Single Market and UK citizens' right to European Union citizenship are retained in the event that the UK leaves the EU.

Hywel Williams (PC) opened the debate. Central to his argument was the acquired or vested rights principle in international law and Article 70(1)(b) of the Vienna Convention:

The crux of our argument is that although we are leaving the EU, the European citizenship rights conferred on UK citizens are not extinguished. Although we are leaving, those rights persist. Continuing Union citizenship is the more convincing interpretation of European and international law. Indeed, the principle that although a treaty might be brought to an end, the rights conferred by it are not extinguished, is enshrined strongly in international law.

"For many, particularly of the younger generation, leaving the EU is just such a heart-rending experience".

Hywel Williams, 7
March 2018

He acknowledged the interpretation “that article 50 extinguishes all rights of the individual created by the founding treaties”, in which case a treaty would need to be negotiated on associate Union citizenship, bringing with it a bundle of rights that might be little different from those that come with full citizenship”. Drawing heavily on the report commissioned by Jill Evans MEP (see above), he said associate citizenship would have to be negotiated as part of the withdrawal agreement, not left to a future relations agreement.

Mr Hywel gave (c 348) as an example of retained citizenship the situation when Ireland became a free state and the UK Government allowed Irish citizens to retain their UK citizenship. This assertion was somewhat deflated by the DUP MP Gregory Campbell (c 348), who pointed out that people who were born in the Republic of Ireland and live in Northern Ireland cannot obtain British passports, although people who have never been to the Republic can obtain Irish passports.

SNP MP, Stephen Gethins, took exception to the Minister Caroline Nokes saying “We are content to listen to proposals from the EU on associate citizenship for UK nationals. However, to date this has not been formally proposed to the UK in the negotiations”. He said it was “incumbent on [the UK Government] to look at our problems and meet the challenges” (c358).

Ben Lake (PC) reminded the House (c362) of the Greenland and Ireland examples, inviting the Government to look also at “the interesting situation of the citizens of some of the Crown dependencies in the Channel Islands, where there is a bespoke and unique relationship”. He envisaged associate EU citizenship (c364) as presenting

...not only [...] a possible solution but offer[ing] much-needed compromise for an embattled Government and a way to heal the deep divisions that have emerged across the UK. [...] this will be a model in which someone could opt in or refuse to opt in—the choice will be theirs.

Jonathan Edwards (PC) wanted the same principle of seeking associate membership of several EU agencies, which the Government has said it would do, to apply to EU citizenship (c369).

Closing the debate for the Government, Robin Walker clarified (c382) that acquired rights under the Vienna Convention argument did not apply to Brexit, and maintained that the UK wanted the reciprocal right to vote and stand in local and national?⁶² elections to continue, although the EU negotiator did not. He said (c384) the UK would pursue this bilaterally with other Member States.

EU (Withdrawal) Bill, Lords debate 28 March 2018

In the debate on the EUW Bill on 28 March 2018, Lord Wigley moved Amendment 358B, which stated: “None of the sections of this Act may

⁶² Presumably Mr Walker did not intend to include national elections in this assurance, as it is not currently an EU citizenship right.

come into force unless it is an objective of Her Majesty's Government, in negotiating a withdrawal agreement, to secure continued EU citizenship for UK citizens". He spoke about an associate European citizenship model (c 851):

Associate European citizenship is a model that the UK could adopt and pursue, and I strongly encourage the Government to think along those lines. As well as affording UK citizens the ability to continue to enjoy the rights and freedoms they currently do, it would safeguard the dormant rights of younger generations and, perhaps most importantly, grant generations yet to be born the same opportunities from which those of us present here today have been able to benefit. It is entirely possible to pursue associate EU citizenship for UK citizens, and there are precedents from which such a scheme could draw. Interestingly, Greenland, as part of a European Union member state, left the EU, while the other part of the member state remains. I note that when Greenland left, the withdrawal agreement ensured the rights of EU citizens. EU citizenship is built on such links and is crucial not only to our economy but to the future of our young people.

"Whilst associate citizenship is not within the current scope of negotiations, I reiterate that I will always be happy to listen to proposals from colleagues or our European counterparts on how we can best safeguard the rights of UK nationals".

Robin Walker, [debate](#) 7 March 2018

Lord Adonis (c 852) "simply [did] not understand how it is possible to have citizenship of an organisation of which we are not a member". He asked (c 853): "There are no halfway houses. What does this thing called associate citizenship amount to? It amounts to a row of beans".

Amendment 355B was withdrawn.

2.6 'Green card' proposal

Another proposal for extending EU citizenship rights to UK citizens came from Roger Casale, founder and CEO of the New Europeans campaign group, in January 2017. His idea was for a new category of European citizenship, not based on having the nationality of an EU Member State, but on legal residency. It would be a "Europe-wide 'green card' for Brits would guarantee their right to reside and work. Parallel arrangements would be put in place for EU citizens legally resident in the UK".⁶³

This is how the Casale campaign envisaged the scheme would work:

- 1) Register:** The European Commission should create a **voluntary register** of Britons with **permanent residency rights** in an EU member state and EU27 citizens who live in the UK.
- 2) Green Card:** Citizens on the register will be issued with a Green Card which will guarantee their rights under the Withdrawal Agreement between the EU and the UK.
- 3) Rights:** Green card holders will enjoy the **same rights** as EU27 citizens living outside their home member state, including the right to **free movement** and the **right to vote** and to stand in local and regional elections.
- 4) Reciprocity:** The UK will treat EU27 citizens who are Green Card holders as if Britain were still a member of the EU and EU

⁶³ Financial Times, [A European green card can help the British economy after Brexit](#), 31 January 2017

member states will treat British Green Card holders as if they were still EU citizens.

5) Withdrawal agreement: Commitments relating to the status of Green Card holders in the UK and the EU27 member states respectively will be anchored in the Withdrawal Agreement and subject to the same arbitration procedures that relate to the Withdrawal Agreement as a whole.

6) Governance: The Register itself would be subject to EU law with all existing remedies available to individuals including through the Data Commissioner, the Parliamentary Ombudsman and the ECJ.⁶⁴

Information on the campaign can be found [here](#).

⁶⁴ [Green Card for Europe Proposal](#). By 17 April 2018 the crowd-funded campaign had raised £4,830 with 212 supporters. See New Europeans website, [Green Card 4 Europe campaign - latest news](#), 6 June 2018.

3. Do UK citizens want to keep their EU citizenship?

Summary

Opinion polls before and since the EU referendum and more recently suggest that UK nationals are moderately attached to their EU citizenship status, but also that this feeling of attachment has increased since June 2016, with young adults most enthusiastic. There have also been EU citizenship campaigns among UK nationals living in another EU Member State, petitions in the EU and the UK, EU Citizens' Initiatives and a court case in the Netherlands.

Reports indicate that applications from UK nationals for citizenship in other EU Member States have increased considerably since the EU referendum.

3.1 Perceptions of EU citizenship in the UK

Eurobarometer

A Eurobarometer Flash Survey on [European Union Citizenship](#) (fieldwork October 2015) published in March 2016 found that UK respondents were among the EU countries least likely to know that they are citizens of the EU and their own country at the same time.

In a subsequent [survey](#) published in November 2016, in response to a question about the extent to which respondents felt they were citizens of the EU, 55% in the UK said 'yes' compared with an EU-28 average of 67%, and 43% said 'no', compared with an EU-28 average of 32%. But 52% of UK respondents thought they knew what their rights were as citizens of the EU, compared with an EU-28 average of 50%.

The November 2016 report concluded that since the spring report, "the sense of European citizenship has gained ground in 16 Member States, most strikingly in the United Kingdom (49%, +14 percentage points), where it is now shared by a narrow majority of respondents"; and it noted the increase in the proportion of UK respondents who thought they knew their rights as citizens of the European Union. On the other hand, the UK was the only country where a majority did not want to learn more about their rights (47% 'yes', versus 51% 'no').

Opinium

The Independent reported the results of an online survey in mid-2017 of 2,004 people, in which a majority of respondents, including many who had voted to leave the EU, said they wanted to retain their EU citizenship - and many were prepared to pay for it.⁶⁵

⁶⁵ The poll was carried out by professor Bruter and Sarah Harrison, London School of Economics research initiative for the study of electoral psychology, ECREP, in conjunction with the polling firm Opinium.

In some instances, people were ready to pay very large sums of money for the citizenship, and this includes people who voted to exit from the union.

Of those who voted Leave in June last year but would now be willing to pay for EU citizenship, one in 10 said they would pay more than £1,000 a year to guarantee their rights.

On average, respondents said they would expect to pay £405 per year, which included 32 per cent of people who would not be willing to pay anything.

Among those who said they would be willing to pay, the average sum cited rocketed to £594.⁶⁶

Other results reported by the Independent were:

- 73% of respondents would increase EU citizens' voting rights;
- 48% wanted to give EU citizens living in the UK the right to vote in general elections as well as local elections;
- 25% supported the status quo of voting only in local elections;
- 10% supported withdrawing EU citizens' right to vote in local elections;
- 6 out of 10 respondents wanted to keep their European citizenship (there was no mention of payments in this question);
- Among 18 - 24-year-olds, 85% wanted to keep their EU after Brexit.

Full [data tables](#) can be found on the Opinium website.

3.2 Petitions in the UK

The [Petitions Committee](#) is a House of Commons committee comprising up to 11 backbench Members of Parliament from government and opposition parties. Information on how petitions work can be found on Parliament's [Petitions website](#). If a petition receives more than 10,000 signatures, a response from the government is guaranteed. At 100,000 signatures a petition will be considered for a debate in Parliament.

There have been around ten petitions about EU citizenship (see [Petitions website](#)), several of which were rejected because they were very similar to other petitions that had been accepted. None has so far been debated. A [petition](#) on 20 April 2018 that UK citizens should be given the option to retain EU citizenship was rejected. It read in full:

UK citizens, who came to majority between 1/1/73 and 29/3/19, should be given the option to retain their EU citizenship post-Brexit. The option to be exercised by 29/3/21.

Many UK citizens, without other EU ancestry, greatly value their EU identity and citizenship. Brexit is stripping this from them and ending a series of rights which they have held since they attained their majority. Whilst the UK may Brexit, these rights should not be extinguished by a decision which they may not have voted for. As we have seen with the Windrush citizenship debacle,

"UK and EU citizens will still want to work and study in each other's countries, and we are open to discussions about how to maintain the links between our people".

Theresa May, [statement](#),
5 March 2018

⁶⁶ The Independent, [Brexit: Nearly 60% of Leave voters would now pay to retain EU citizenship](#), 2 July 2017

citizenship is not a simple bureaucratic question. This issue must be properly addressed in Brexit negotiations.

The petition was rejected because it was about something for which the UK Government or Parliament is not responsible: “The decision to allow UK citizens to retain EU Citizenship is the responsibility of the European Union, not the UK Government or Parliament”. However, the Petitions Committee suggested starting a new petition “asking the Government to negotiate with the EU the possibility of retaining EU citizenship for certain UK nationals” or signing [petition 208035](#) instead. This petition called on the Government to negotiate a right for EU/UK citizens to hold a second EU passport after 2019, which would “help heal the rift in the UK”. The petition was closed on 22 June 2018 with only 47 signatures.

Another [petition](#) called on the Government to negotiate “with the EU the possibility of direct EU citizenship for UK nationals”. This petition was closed on 19 April with 1,698 signatures.

A [petition](#) that is open until 14 December 2018 formally requests the EU to allow UK citizens to request EU citizenship after Brexit. As of 5 July 2018 this petition had 20 signatures.

3.3 UK applications for citizenship of another EU Member State

Applications from UK citizens for citizenship in other EU Member States have increased since the EU referendum. Applications have come not just from UK nationals already living abroad but from many living in the UK.⁶⁷

According to a BBC report:

In 2017 a total of 13,141 UK citizens obtained the nationality of one of the 18 member states from which the BBC has received figures.

This compares with 5,056 in 2016 and only 1,826 in 2015.

The most frequent new nationality was German, which saw a huge jump from just 594 cases in 2015 up to 7,493 in 2017.⁶⁸

The following table from the BBC report shows how the applications are spread among 18 Member States.

This is likely to be an underestimate of the actual situation. In some EU Member States (e.g. Austria, Estonia, Lithuania, Netherlands and Slovakia) dual nationality is not an option, while in others it is restricted to the nationals of certain countries only. These are not likely to be included in the table. Furthermore, UK nationals not willing to give up UK nationality to get an EU Member State nationality are probably among a fair number of those ‘not reported’.

⁶⁷ There are also reports of high profile Brexit supporters such as Nigel Lawson and Nigel Farage applying for residency or a passport for themselves or family in another EU Member State.

⁶⁸ BBC News, [Surge in Britons getting another EU nationality](#), 30 June 2018

UK citizens becoming citizens of EU countries				
EU member state	2014	2015	2016	2017
Austria	6	10	10	24
Belgium	110	127	506	1381
Czech Republic	3	2	5	26
Denmark	21	70	85	164
Estonia	0	0	0	0
Finland	13	26	31	147
France	279	320	439	1518
Germany	496	594	2702	7493
Greece	43	46	31	56
Hungary	4	3	11	29
Ireland	51	54	98	529
Luxembourg	63	74	128	366
Poland	0	6	5	7
Portugal	13	11	20	147
Romania	2	0	1	2
Slovakia	0	2	0	1
Spain	67	28	44	48
Sweden	436	453	940	1203
Total	1607	1826	5056	13141

3.4 Legal challenge in the Netherlands

Case at Amsterdam District and Appeal Courts

Five British nationals living in the Netherlands and supported by the group, [Brexpats – hear our voice](#) (BHOV), took a case to the Amsterdam District Court, arguing that their EU citizenship should not be removed after the UK leaves the EU. They maintained that because under Article 20 TFEU EU citizenship “shall be additional to national citizenship and not replace it”, those who are already EU citizens cannot be deprived of their EU citizenship because the state of which they are nationals leaves the EU.

The District Court said it would refer the case to the CJEU. But on 20 February 2018 Judge Bakels granted the State and the Municipality permission to appeal to the Court of Appeal in Amsterdam against his earlier ruling.

The judge will issue two draft questions to be put before the ECJ within the next two weeks.

The first question asks the ECJ panel of judges to determine whether Brexit means British nationals will automatically lose their EU citizenship and all the rights that flow from that, including freedom of movement.

If the answer to that question is no, then the ECJ judges are asked to determine what, if any, conditions or limitations should apply to the maintenance of those rights once Britain leaves the EU.⁶⁹

On 19 June 2018 the Amsterdam Appeal Court decided not to refer to the CJEU the question of whether EU citizenship is automatically lost with Member State withdrawal. Oliver Garner writes:

The questions were declared 'insufficiently concrete' in light of the hypothetical nature of the complaint. It remains to be seen whether the legal dispute could re-surface if and when the issue of the loss of EU citizenship does become concrete when the United Kingdom's withdrawal from the European Union is finalised.⁷⁰

Comment on the Netherlands case

- DutchNews.nl, [Appeal judges reject British EU citizenship claim, won't refer to EU court](#), 19 June 2018
- EU Law Analysis, [Does Member State Withdrawal from the European Union Extinguish EU Citizenship? C/13/640244 / KG ZA 17-1327 of the Rechtbank Amsterdam \('The Amsterdam Case'\)](#), update, Oliver Garner, 19 June 2018
- Financial Times, [Can Britons keep their EU citizenship after Brexit? ECJ set to rule on whether loss of rights is disproportionate and unjust](#), 6 June 2018
- EU Law Analysis, [UK nationals and EU citizenship: References to the European Court of Justice and the February 2018 decisions of the District Court, Amsterdam](#), Professor Anthony Arnull, 28 March 2018
- Bureau Brandeis blog, [Update – Brexit case in the Netherlands](#), Christiaan Alberdingk Thijm, 30 Jan 2018
- [Memorandum of pleadings](#), [writ of summons](#) and unofficial translation of [ruling](#)

3.5 Petitions to the European Parliament, campaigns and Citizens' Initiatives

Professor Jo Shaw (University of Edinburgh), in [EU citizenship: still a fundamental status?](#)⁷¹, notes an increase in civil action on EU citizenship since the EU referendum: "Brexit has given rise to unprecedented civic mobilisation around demands for the protection of acquired rights, including several European Citizens' Initiatives registered by the European Commission".

⁶⁹ Guardian, 7 February 2018, [British group wins right to take Brexit case to European court](#)

⁷⁰ EU Law Analysis, [Does Member State Withdrawal from the European Union Extinguish EU Citizenship? C/13/640244 / KG ZA 17-1327 of the Rechtbank Amsterdam \('The Amsterdam Case'\)](#)

⁷¹ European University Institute Working Paper RSCAS 2018/14

Anti-Brexit and specific EU citizenship campaigns have been established over the last two years, including [Choose Freedom](#), [The 3 million](#) and [New Europeans](#).

Two European Citizens' Initiatives (ECIs)⁷² on the Commission [website](#) that were registered in March 2017 concerned European citizenship. The first from [Flock Brexit](#) asked the Commission to separate Union citizenship from Member State nationality in the light Brexit ([EU Citizenship for Europeans: United in Diversity in spite of jus soli and jus sanguinis](#)), and the second, from the [Permanent European Citizenship](#) group, called on the Commission to uphold the right of Union citizens to move and reside freely within the EU ([Retaining European Citizenship](#)).

Both met the conditions for registration under the Regulation on European Citizens' Initiatives, but received insufficient public support and were closed in March-May 2018.

3.6 Complaint to European Ombudsman

In April and August 2017, a UK national living in Belgium wrote to the European Commission about keeping his Union citizenship under Article 20 TFEU, regardless of Brexit and the outcome of the withdrawal negotiations.⁷³ The Commission responded that only nationals of EU Member States can have EU citizenship and referred to the two then ongoing European citizens' Initiatives on this matter. The Commission said it was fully aware of the serious consequences of Brexit for citizens who had built their lives on the assumption that they would always be protected by the rights flowing from the UK's EU membership, and that in the Brexit negotiations, the Commission aimed to protect for life the life choices made by these citizens to the extent possible under the EU Treaties and the Commission's negotiating mandate – the EU negotiator, Michel Barnier had no mandate to negotiate EU citizenship for UK nationals.

The complainant was dissatisfied with the Commission's response and wrote to the Ombudsman, maintaining the Commission had failed to explain its position on the question of EU citizenship for UK nationals post-Brexit. The European Ombudsman, Emily O'Reilly, upheld the Commission's position and closed the case on 3 April 2018.⁷⁴ She also expressed her understanding of the concerns of citizens affected by Brexit and referred the complainant to the achievements of the negotiators (Michel Barnier and David Davis) in seeking to ensure citizens' rights in the EU and the UK were preserved after Brexit.⁷⁵

⁷² ECIs were introduced by the Lisbon Treaty. If a registered ECI receives the signatures of one million validated statements of support from at least seven Member States within a period of one year from the time it was registered, the Commission must decide whether or not to act and explain the reasons for that choice.

⁷³ [Case: 59/2018/TN](#), opened on 3 April 2018; decision on 3 April 2018

⁷⁴ See [Decision](#) in case 59/2018/TN on the European Commission's reply to correspondence concerning EU citizenship for UK nationals post-Brexit.

⁷⁵ See Commons Briefing Paper 8269, [Brexit: the draft withdrawal agreement](#), 23 March 2018.

4. Further reading

- Commons [Debate Pack](#) 6 March 2018
- Martijn van den Brink and Dimitry Kochenov, 8 May 2018: A Critical Perspective on Associate EU Citizenship after Brexit, DCU Brexit Institute - Working Paper no. 5 – 2018, University of Groningen Faculty of Law Research Paper 12/2018. Abstract: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3175318
- *Manchester University blog*, [Free-floating Citizenship – Could UK individuals be permitted to retain a form of EU citizenship post-Brexit?](#) Javier Garcia Oliva, 7 August 2017
- European Parliament study for the Petitions Committee, [The impact of Brexit in relation to the right to petition and on the competences, responsibilities and activities of the Committee on Petitions](#), Professor Eleanor Spaventa, June 2017
- Patricia Mindus, 'European Citizenship after Brexit', 29 September 2016. Available at SSRN <https://ssrn.com/abstract=2842500> or <http://dx.doi.org/10.2139/ssrn.2842500>
- *Personnel Today*, 13 January 2017, [Could "associate EU citizenship" become a worthwhile employee perk?](#)
- *The Pan European*, [My plan for 'Associate EU Citizenship](#), Charles Goerens, 30 April 2017, and [interview](#) with Charles Goerens, 30 April 2017
- *The Economist*, [Can Britons keep their EU citizenship after Brexit?](#) 12 April 2017
- *Renforce blog*, [EU citizenship: a slipping anchor to hold on to rights? Brexit and the consequences for EU citizens with British nationality](#), Hanneke van Eijken, 22 February 2017
- *EurActiv*, [Charles Goerens: Associate citizenship for Brits is 'an offer, not an obligation'](#), 1 December 2016
- *Eutopialaw*, [The problems associated with associate citizenship of the EU](#), Dr Adrienne Yong, 18 November 2016
- *Independent*, [European Parliament considers plan to let individual Brits opt-in to keep their EU citizenship](#), 9 November 2016
- Durham European Law Institute, [Brexit and Citizenship: The Past, Present and Future of Free Movement](#), Stephen Coutts, 12 September 2016
- *European Law Blog*, [Union citizenship – still Europeans' destiny after Brexit?](#) Gareth Davies, 7 July 2016
- Kochenov, D. *EU Citizenship and Withdrawals from the Union: How Inevitable is the Radical Downgrading of Rights?*, LEQS Paper No. 111/2016

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