

## Editorial

# Citizens First

Weeks after invoking Article 50 of the Treaty on European Union to commence the UK's withdrawal, Theresa May called a snap election to 'strengthen' her hand in the imminent negotiations. She miscalculated badly. Instead of increasing her Parliamentary majority, a fragile minority government depends on support from the Democratic Unionist Party of Northern Ireland. In large numbers, people cast their ballot for Jeremy Corbyn's Labour Party, which successfully mobilised millions of new voters, with estimated turnout among those aged 18 to 24 soaring from 43 per cent in 2015 to 72 per cent in 2017. Amongst those aged 33 to 44, Labour are reckoned to have attracted 50 per cent to the Conservatives' 30 per cent. With 33 more MPs, Labour now speaks of a 'jobs first' Brexit, although the Party might find that many of its new supporters prefer to retain their European citizenship and the opportunities it confers.

Meanwhile, millions of people living in the United Kingdom, whose personal and professional status is directly affected by the outcome, had no vote in the General Election on 8 June 2017. By contrast, up until May 2018, they and others throughout the European Union can endorse a European Citizens' Initiative entitled 'Retaining European Citizenship'. The purpose of the Initiative is to spur legislation at the European level with a view to safeguarding people from being used as bargaining chips in the way some British politicians currently approach negotiations for the withdrawal of the UK from the European Union.

More than three million people who have moved to the UK from other member states of the European Union may vote in local and European Parliamentary elections, but they were denied a vote in the elections to the Westminster Parliament. They pay taxes in the UK, but have no political representation at the national level. This perhaps explains, at least in part, why these people are treated as bargaining chips by Mrs May's Government. There is no electoral accountability to these people on the part of Westminster MPs. During the passage of the Article 50 Bill, the unelected House of Lords sought to give legal protection to the status and rights of EU nationals resident in the UK, only for the amendment to be rejected by elected members of the House of Commons, including Kate Hoey, Gisela Stuart, Kelvin Hopkins and some other Labour MPs, who voted with the Conservative government against their own Party whip.

Meanwhile, UK nationals resident abroad for more than 15 years, many



of them in the European Union, were also denied a vote in the 2017 ‘Brexit’ General Election, which impacts directly on their lives. Despite a 2015 Conservative Manifesto promise to enfranchise these tens of thousands of people, many of whom pay taxes in the UK, and inclusion in the Queen’s Speech of prospective UK legislation, Mrs May ‘reluctantly’ and mistakenly decided to go for electoral broke, whether or not people who had been promised a vote were again denied it, as they were at the Brexit Referendum itself, in May 2016.

By contrast, a more inclusive approach is evident in the European Parliament. In April 2017, Guy Verhofstadt, the Parliament’s Brexit representative, said

‘... let us put the citizens first, and it does not make any difference whether they are EU citizens or UK citizens. We will be firm, we need to be firm to defend the unity and the interest of the European Union towards the UK authorities, but my appeal here in the House today is to be open, positive and generous towards UK citizens, because many of them, millions of them, want to keep their relationship, their link, their identity on the European level ...’

In May, Mr Verhofstadt elaborated on this theme at a well-attended public hearing on the situation and rights of EU Citizens in the UK, convened in Brussels by chairs of several Parliamentary committees. There he identified three groups affected by Brexit: EU nationals resident in the UK; UK nationals resident in the EU27 member states; and UK citizens resident in the UK who wish to retain their European citizenship. Mr Verhofstadt has received thousands of communications from people in the latter group, and clearly wishes to make a generous response. The Constitutional Affairs Committee, which he chairs, has commissioned work in this area, which recommends the following approach to the Brexit negotiations:

‘Those political guidelines [of the European Council] should be as close as possible to an agreement by which the EU and the UK maintain over an extensive period the enjoyment of the rights that European citizens have possessed until now. Therefore, **the safeguarding of these rights should form part of the UK’s withdrawal agreement, without prejudice to their being repeated in the agreement on the framework for the future relationship between the EU and the UK, once the British withdrawal from the EU has taken place.**’

Further,

‘To give the agreement on the rights of citizens the maximum legal substance, **it should be subsequently written into an international treaty between the EU and the UK**, once it is formally a third country. The treaty in question will





have to be incorporated into the legal framework of the UK and the 27 other countries that make up the Union today.’ \*

The United Kingdom will not become a ‘third country’ under the Treaty until it has left the Union. The study distinguished between the two pluses of agreement in this way:

‘First, the agreement under Article 50 Treaty on European Union [the Lisbon Treaty] may be concluded or not. In the latter case, the UK will leave the Union two years after the notification of withdrawal, barring a decision by the European Council to extend the period. This agreement does not require ratification by every Member State ... the Council will conclude the agreement on behalf of the Union, acting by a qualified majority “after obtaining the consent” of the European Parliament.’

The European Commission’s ‘two phase’ approach means that:

‘Second, the agreement (or agreements) on the “future relationship” between the EU and the UK, which will probably be negotiated when the country no longer forms part of the Union ... needs to be ratified by all Member States (as a “mixed” agreement).’

‘Mixed’ means competences at the Union level as well as at the level of member states are affected. ‘Between the two agreements, a provisional situation could be brokered,’ the study says. ‘That the United Kingdom may end up out of the Union does not require the citizens affected to be treated as if they belong to a third country from the outset.’ We shall see.

If it leaves the European Union, the United Kingdom will have the status of a ‘third country’ under European treaties. UK nationals residing in the EU27 member states will become ‘third-country nationals’, rather like many Turkish residents in Germany, for example. How might the rights of UK citizens who wish to retain their status as European citizens be buttressed?

European citizens’ initiatives (ECI) were cited by Mr Verhofstadt as one among several opportunities for UK nationals to exercise their European citizenship. So, without delay, we have enacted our European citizenship through the **Retaining European Citizenship** Initiative, which appears on page 2.

We have until 2 May 2018 to collect endorsements of this Initiative from one million European citizens resident throughout the 28 member states of the European Union. That is almost 3,000 a day, so it is a big ask. Should we cross the high threshold, the European Commission is required to make a legislative response, or explain why it cannot do so. When registering the Initiative, the Commission made the following observations:





‘A legal act of the Union for the purpose of implementing the Treaties can be adopted in the field of rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States of the EU. Such a legal act may therefore confer certain similar rights to those linked to citizenship of the Union on citizens of a state that has withdrawn from the Union pursuant to Article 50 TEU. Moreover, rights of EU citizens who have already exercised their freedom of movement prior to the withdrawal of a Member State from the Union can be safeguarded in an agreement pursuant to Article 50 TEU.’

The Commission positively identifies what might be done for Mr Verhofstadt’s first two categories, but doesn’t expressly comment on his third group of UK citizens in the UK who wish to retain European citizenship. This status carries with it fundamental rights such as freedom of movement and residence, as well as democratic rights such as standing and voting in elections to the European Parliament, and corresponding with European officials.

On 22 March 2017, when the ‘Retaining European Citizenship’ and the so-called ‘Flock’ initiatives were registered, Michel Barnier, the Commission’s Chief Brexit Negotiator, welcomed both. He anticipated the UK triggering Article 50, saying:

‘Our watchword will be: “Citizens first!” And I welcome the College’s decision this morning to register the two Citizens’ Initiatives [Retaining European Citizenship and the so-called ‘Flock’ initiative]. The issues at play are complex, whether they are residency rights, access to the labour market, pension or social security rights, or access to education ... But we can and we should agree – as soon as possible – on the principles of continuity, reciprocity and non-discrimination so as not to leave these citizens in a situation of uncertainty.’

‘Citizens First!’ Let this clear priority include all the Union’s citizens.

\* Source: *The impact and consequences of Brexit on acquired rights of EU citizens living in the UK and British citizens living in the EU-27* by Antonio Fernandez Tomas, Professor of Public International Law, University of Castilla-La Mancha and Diego Lopez Garrido, Professor of Constitutional Law, University of Castilla-La Mancha, Fundacion Alternativas, prepared for the Directorate General for Internal Policies, Policy Department C: Citizens’ Rights and Constitutional Affairs, April 2017 Copyright European Union 2017 PE 583.135

*Please endorse the Retaining European Citizenship Initiative via  
[www.eucitizen2017.org](http://www.eucitizen2017.org)*



## RETAINING EUROPEAN CITIZENSHIP

### *Some responses to the Initiative*

*'For peace, human rights, culture and economy we are all European and should not have this right removed from our identity. It is indispensable and central to our way of life.'*

**Polly**

*'I am a citizen of Europe and do not want to have my rights taken from me. Organisations and initiatives like yours are key to helping cope with the realities of where the nation now finds itself placed.'*

**Lawrence**

*'Hope you all enjoyed the May Day holiday. On Monday, I was lucky enough to be a guest of Unite the Union at the International Workers' Day celebrations in Gibraltar and spoke at the event. As Gibraltar's my home turf, I was doubly proud to speak up for the rights and shared values of workers and their families across the European Union. The right to freedom of movement is a huge issue in Gibraltar. I grew up there when there was a border with Spain and I know from personal experience there's a world of difference between a world with borders and one without. Our TSSA Executive Committee (EC) last week agreed to support the new European Citizens' Initiative to safeguard people from being used as 'bargaining chips' in Brexit negotiations.'*

**Manuel Cortes, Transport Salaried Staffs' Association General Secretary**

*'I support retaining my European Citizenship – more than furious about the UK government taking my rights away – rights I have used happily and proudly for 40 years in many ways – very disappointed that my son may lose rights I have enjoyed and desperate for him to have the same opportunities.'*

**Nicola**

*'I did not vote for Brexit, I did not vote to leave the EU. I wish to remain. I have a German wife and lived in Germany for 13 years. We are better together.'*

**David**

*'I am British & am about to be forced into a situation I couldn't even vote for. Thank you for helping me and all the other British people who are in despair about our country and its leaders. Retain EU citizenship!'*

**Sally (Spain)**

*'My dad was Austrian & Hungarian [and my name is Czech], my mother had a mix of ancestors who were French (Huguenot), Scottish and English. I consider myself English European and want to retain the rights to be part of Europe – no (wo)man is an island, entire of itself; every (wo)man is a piece of the Continent, a part of the main; if a clod be washed away by the Sea, Europe is the less ...'*

**Sal**