BENEFITS OF BEING AN EU CITIZEN – AN OVERVIEW IN THE CONTEXT OF THE UK'S DEPARTURE FROM THE EU

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Abstract

Whilst joining the EU entails numerous rights and obligations for the acceding state, in areas ranging from custom duties to agriculture to judicial cooperation in both criminal and civil matters, the EU Member States' citizens and residents themselves also gain a considerable number of advantages, some immediate and deriving directly from the newly-obtained EU citizenship, like the right to travel to and reside in any other Member State, and some less immediately or frequently exercised, but just as – if not more – important, such as having their fundamental rights protected through the dispositions of the EU Charter of Fundamental Rights, or living in a healthy environment that is protected, at a European level, through numerous regulations and directives. When a state leaves the EU, as the United Kingdom has recently done, the citizens – and, depending on the case, other residents – of that state lose all these added legal, economic, and social safeguards. This paper sets out to analyse the benefits enjoyed by the people living in the EU, compared to those residing outside its borders, using the UK's withdrawal from the EU – the first state to ever do so – as an opportunity to look at the same group's rights before and after such an event.

Keywords: *EU citizenship*, *free movement of people*, *social security*, *Brexit*, *electoral rights.*

Introduction

When European citizenship was formally introduced into EU law by the Treaty of Maastricht, in 1993, one of its main functions was to extend the freedom of movement to situations that did not involve economic activities, with the understanding that there would have to be a cross-border element in order to make the relevant dispositions applicable. EU

citizenship was part of a shift the European Union[26] made from an economically-oriented international organisation to one concerned with matters ranging from fundamental rights to environmental law.

In the 1999 case *Grzelczyk*[27] the Court of Justice stated that 'European citizenship is destined to be the fundamental status of the nationals of the member states'; in *Rottman*[28] the Court moved beyond a market-based approach; and in *Ruiz Zambrano*[29] it cemented the disjunction between European citizenship and economic activities, by recognising the application of its benefits in a case that lacked any intra-EU cross-border elements, saying that 'to be at all able to make use of cross-border rights and even if they have not yet crossed any internal borders, European citizens must possess a deeper, more fundamental right to reside on European territory.'

What this has meant for nationals of EU Member States has been an ever-growing array of rights and benefits to be enjoyed within the EU, as well as additional diplomatic and consular assistance when leaving the EU's territory and traveling to third-countries. From the ability to move freely throughout the EU, to having a direct say in the elaboration of EU legislation, to being protected in the work place against conditions that could negatively impact their health, nationals of EU Member States have gradually reached an enviable legal status, in comparison to that of most third-country nationals.

The main vulnerability of this privileged legal status is that it is dependent on holding the nationality of an EU Member State – third-country nationals enjoy some of the protections that EU citizens do, but not all, and frequently have to submit to individual states' legislation and standards. Once an EU Member State withdraws from the Union – or if it decides to revoke an individual's nationality – EU citizenship is lost, and all its associated rights and benefits are lost as well, both for the EU citizens residing on its territory, as well as for its own nationals who reside within the EU. The practical consequences of this loss of EU citizenship will naturally vary from case to case, depending on several demographic and socio-economic factors, but what is essential is to identify the main issues that can arise from

[26] For the purposes of this paper, the name 'European Union' shall also be used when referencing the European Community.
[27] Case C-184/99 *Grzelczyk*, ECLI:EU:C:2001:458.
[28] Case C-135/08 *Rottmann*, ECLI:EU:C:2010:104.
[29] Case C-34/09 *Ruiz Zambrano*, ECLI:EU:C:2011:124.

such a change in legal status, in order to ensure, first and foremost, that individuals are negatively affected as little as possible by states' decisions on the matter of EU participation or of nationality.

EU citizenship – corresponding rights and duties

EU citizenship is enshrined in the Treaty on the Functioning of the European Union (TFEU), in Part Two, 'Non-discrimination and citizenship of the European Union', art. 20 to 25, with corresponding rights also regulated in the Treaty on the European Union (TEU), art. 10 and 11.

Art. 21 TFEU extends the free movement of persons to non-economic contexts, allowing EU citizens to move and reside anywhere within the EU without having to exercise an economic activity. This was a major innovation brought about by the Treaty of Maastricht, and a sign of changing views regarding the EU's main values and objectives.

Art. 22(1) TFEU confers EU citizens who reside in a Member State whose nationality they do not hold the right to vote in local elections. Art. 22(2) TFEU provides the right to vote and to stand as a candidate in elections to the European Parliament in whichever Member State the citizen resides, under the same conditions as nationals of that State.

Art. 23 TFEU states that EU citizens, when travelling or residing outside of the EU, can request diplomatic and consular protection from any other EU Member State, if their own is not represented in that third country. The introduction of such a right was a manner of bringing countries closer together, making them unite in their protection of EU citizens, regardless of their nationality. Overtime this could create a feeling of community, of shared identity, solidifying the notion that individuals belong to the EU first, and only secondly to the States, meaning that States take on responsibility for what happens to these individuals, regardless of their nationality. Ideally, each Member State of the EU would protect other States' nationals, who are on its territory, as vigorously as it would protect its own nationals.

Art. 24 TFEU provides the right to hold EU institutions to account, by addressing questions to them. Said questions can be addressed in any official language of the EU, and the institution must reply using the same language. EU citizens can also petition the European Parliament (art. 227 TFEU) and can apply to the European Ombudsman to launch

an investigation into the behaviour of EU institutions (art. 228 TFEU), if the citizens feel their rights are not being respected. These dispositions were introduced as part of a prolonged process of increasing the democratic legitimacy of the EU. On the one hand, national parliaments and the European Parliament – whose members are directly elected by EU citizens – have gradually seen their roles increase, and on the other, EU citizens have gained more and more rights and opportunities to influence EU policies.

Art. 10(2) TEU provides that 'EU citizens are directly represented at Union level in the European Parliament', whilst art. 10(3) TEU provides that 'every citizen shall have the right to participate in the democratic life of the Union'. Art. 11(4) TEU provides the possibility of a citizens' initiative, a possibility introduced through the Treaty of Lisbon.

Member States and EU institutions must comply, when applying EU law, with the dispositions of the Charter of Fundamental Rights of the European Union, which include, in Title V, dispositions related to EU citizenship. Additionally, EU institutions have an obligation to respect the principle of transparency, so that EU citizens can participate in the decision-making process and be adequately informed regarding all of the institutions' decisions. This gives EU citizens a clear advantage in comparison to third-country nationals who reside and work within the EU, but who don't have the possibility to influence EU decision-making in any consistent way – they must respect the legislation that comes from the EU as-is.

EU governance is primarily based on representative democracy [art. 10(1) TEU states that 'the functioning of the Union shall be founded on representative Democracy'], but the Treaty of Lisbon made a shift towards participative democracy, with EU citizenship reflecting the idea that the people of Europe should have a direct say in the process of integration, alongside the Member States' authorities.[30]

In the *Delvigne* case,[31] the CJEU stated that there is a clear link between the democratic governance of the EU and EU citizenship, and it showed that 'that the political dimension of EU citizenship is not limited to art. 20 to 25 TFEU, but also involves other provisions of EU law, notably art. 14(3) TEU and art. 1(3) of the 1976 Act. Those provisions impose on the

[30] Koen Lenaerts, 'Linking EU Citizenship to Democracy', *Croatian Yearbook of European Law and Policy*, vol. 11, 2016, p. VIII.
[31] Case C-650/13 *Delvigne*, ECLI:EU:C:2015:648.

Member States obligations whose objective is to ensure that the basic principles inherent in a democratic electoral system are applied at EU level.'[32]

Duties are mentioned once in conjunction with EU citizenship, but don't have any other corresponding dispositions or legal basis within the EU Treaties. One duty that is presumed to exist, in relation to EU citizenship, is that of moving from one Member State to another, in order to fall within the scope of EU law and enjoy all the associated rights. Whilst it is true that, in most cases and due to the way EU law is structured, movement between two States is necessary, CJEU has repeatedly applied EU law in cases where there was no such cross-border element, as was the case in *Ruiz Zambrano*.[33]

As duties cannot be implied, nor can they be extracted from rights, but rather have to be explicitly stated, it means that EU citizenship, effectively, bestows *only* rights on EU Member States' nationals. This should be considered an asset, rather than an indication that EU citizenship is 'inferior' to States' nationalities. On a worldwide level, for the past decades and even centuries, citizenship-related duties (such as 'paying allegiance to one's lord or ruler') have been dwindling in number, whilst rights have been increasing, a reflection and component of the growing respect and aspiration for democracy, fundamental human rights, and the rule of law. As such, the fact that the EU's fundamental Treaties contain no duties for its citizens is a progressive and laudable approach, and it's even been argued that citizenship duties are 'antithetical to the goals of freedom, liberty, rights protection and individual empowerment that the Treaties set out to achieve.'[34]

In the UK, the right to vote is restricted to British nationals, and qualifying Commonwealth or Irish nationals, provided that they are residents. British nationals who have not lived within the UK for more than 15 years lose their right to vote, regardless of holding continued British nationality. Whilst the UK was in the EU, other Member States' citizens were also allowed to vote in local elections, provided that they resided within the UK. Following Brexit, they will no longer have this right – whilst Scotland and Wales allow all residents to vote in local elections, regardless of their nationality, England and Northern Ireland restrict this right to nationals. As such, more than one million citizens from EU

[32] Koen Lenaerts, *op. cit.*, p. XIII.
[33] Dimitry Kochenov, *EU Citizenship without Duties*, University of Groningen Faculty of Law Research Paper Series, no. 15/2013, p. 8.
[34] *Idem*, p. 7.

countries lose their right to vote in local elections in England, as a consequence of the UK withdrawing from the EU.[35]

Regarding the right to diplomatic protection and consular assistance from other Member States, Brexit is unlikely to have a strong impact. On the one hand, the situation of EU citizens living in the UK is not legally or practically altered. They can continue using the consulates of their own Member States, as well as those of other EU Member States. On the other hand, as far as British nationals are concerned, they do lose the possibility of asking for help from the EU Member States' consulates. But from a pragmatic point of view, this does not change their legal situation significantly, considering that the UK has diplomatic and consular representatives in most of the world.[36]

Outside of the UK, as far as EU citizens who continue to reside within the EU are concerned, Brexit should not present many issues. These individuals will continue to be able to address the Ombudsman, to vote in local elections even without holding that Member State's nationality, or to participate in elaborating an ECI. On the other hand, British nationals residing within the EU will no longer be able to take part in these procedures.[37] According to UN data, 1.3 million people born in the UK lived in EU countries, in 2019. 302,000 of them resided in Spain, 293,000 in Ireland, 177,000 in France, 99,000 in Germany, and 66,000 in Italy.[38] Through Brexit, these individuals have lost all the rights and benefits tied to EU citizenship.

Arguably the greatest loss incurred by both British nationals and EU citizens post-Brexit is the loss of free movement, one of the fundamental freedoms of the European Union. In addition to British nationals and EU citizens, people affected by this loss of rights include the nationals of EFTA Member States.[39] Iceland, Norway, and Liechtenstein have concluded an international agreement with the EU, creating the European Economic Area (EEA)[40], extending the freedoms of movement to these non-EU states, and creating a space where

[35] Willem Maas, *European Citizenship in the Ongoing Brexit Process*, International Studies, vol. 58, Issue 2, 2021, p. 170.
[36] *Idem*, p. 171.
[37] *Ibidem.*
[38] https://www.un.org/en/development/desa/population/migration/data/estimates2/estimates19.asp (accessed on 1 May 2022).
[39] Switzerland is an EFTA member as well, but its relationship to the EU is based on a series of bilateral agreements that create a legal framework very similar to that of the EEA. Switzerland does not directly take part in the EU decision-making process, but it can decide which pieces of legislation it wants to apply for itself.
[40] Iceland and Norway agreed to join the EEA and the Schengen Area in large part due to the fact that the other Nordic states (Denmark, Finland, and Sweden) had joined the EU. This way, Iceland and Norway can retain free travel with their fellow Nordic states.

nationals all parties can travel without any restrictions. Now, British nationals can no longer move freely between EEA Member States, and the UK has to negotiate separate agreements with the three EFTA states, in order to ensure access to their territories for British nationals.

It's been speculated that, without the UK as a member state, the EU may be more likely to agree to common standards for acquiring national citizenship, given that national citizenship automatically allows the exercise of EU citizenship rights throughout all EU member states. It's interesting to note that, despite there being no EU legislation to that effect, Member States' policies on the obtaining of nationality via naturalisation have gradually converged, with the required length of residence being similar in all Member States.[41] It's very likely that this is one effect of the introduction of EU citizenship.[42]

Workers' rights in the EU – the Working Time Directive

In the matter of workers' rights, as protected on a Union level, a crucial piece of legislation has been the Working Time Directive (WTD, currently Directive 2003/88/EC of the European Parliament and of the Council of 4 November 2003 concerning certain aspects of the organisation of working time), which provides many protections for people working within the EU. It has not been without its detractors, including the UK, who tried to block its adoption, and, upon the failure of that attempt, brought an action for annulment against it, which fared no better. Specifically, the Commission chose as a legal basis for the adoption of this Directive an article concerning the health and safety of workers, a matter subject to qualified majority voting. The UK argued that the suitable legal basis would be art. 235 EEC (currently art. 352 TFEU)[43], which requires unanimity (it is rather clear that the UK's goal was to use its power of veto to block the Commission's proposal).

In terms of content, the WTD provides, among other things, minimum daily rest periods of 11 hours; breaks when working days are longer than six hours; weekly working hours of

[41] Willem Maas, *op. cit.*, p. 177.

[42] See also Oana-Mihaela Salomia, *The legal effects of the European Union citizenship*, Challenges of the Knowledge Society, 12th ed., 11-12 May 2018.

[43] Art. 352(1) TFEU provides: 'If action by the Union should prove necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and the Treaties have not provided the necessary powers, the Council, acting unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament, shall adopt the appropriate measures. Where the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament.'

not more than 48 hours, including overtime (a disposition which has caused much discussion at a national level, with many employers seeking to avoid its enforcement); a weekly rest period of 24 uninterrupted hours; a minimum of annual leave of four weeks; and night work to be no longer than an average of eight hours in a 24-hour period. The WTD defines working time as 'any period during which the worker is working, at the employer's disposal and carrying out his activity or duties, in accordance with national law and/or practice', and rest period as 'any period which is not working time'.[44] The WTD also provides exceptions from all of these rules, including the possibility for the working week to exceed 48 hours with the worker's consent.

'Analysis of data from Eurofound's fourth European Working Conditions Survey (EWCS) showed that long working hours are linked to poor working conditions. Those who work more than 48 hours a week are almost twice as likely to consider that their health and safety is at risk because of their work, and that their job affects their health. The impact on work–life balance is even more substantial: 'three times as many long-hours workers report that their working hours do not fit their social and family commitments'.[45]

The WTD includes an opt-out from the 48-hour weekly working limit, that has been employed by some of the EU's Member States, under varying conditions (for example, some States have limited its use to certain occupations or sectors of activity).

The UK was one of the states that did use the opt-out, but its legislation provided that the same maximum number of hours worked applied to people who worked multiple jobs; consequently, it wasn't possible for one worker to conclude multiple full- or part-time employment contracts, with several employers, that would lead to surpassing the 48-hour limit. UK workers over the age of 18 could opt out of the 48-hour week, indefinitely or for a limited period, via a voluntary, individual, and in-writing opt-out. It was forbidden for employers to pressure workers into signing such an opt-out agreement, and the worker could revoke it at any time, with a minimum of seven days' notice. The opt-out did not apply to certain categories of employees, such as workers on ships or boats; airline staff; workers

[44] Tobias Nowak, *The turbulent life of the Working Time Directive*, Maastricht Journal of European and Comparative Law, vol. XX(X), 2018, available at https://journals.sagepub.com/doi/10.1177/1023263X18760547 (accessed on 1 May), p. 3.

[45] Jorge Cabrita, Yolanda Torres Revenga, *Opting out of the European Working Time Directive*, Eurofund (2015), Publications Office of the European Union, Luxembourg, 2015, p. 20.

in the road transport industry, such as delivery drivers (and it is interesting to note that this is one category of workers where EU citizens from other Member States were more numerous); other staff who travel in and operate vehicles covered by EU rules on drivers' hours, such as bus conductors; security guards on vehicles carrying high-value goods.[46] The UK was also one of the few Member States that collected data on the use of the opt-out. According to that data, 'In 32.4% of the surveyed workplaces there were at least some workers who had signed an opt-out agreement. In 15.6% of workplaces all employees had signed an opt-out agreement. The highest rates are found in construction, other business services, and transport and communication. In addition to data on the use of the opt-out, WERS also reports that some 11.5% of all employees surveyed usually worked more than 48 hours per week, with the highest rates in transport and communication, construction and education.'[47]

The lack of data available regarding the use of the opt-out makes it hard to gauge how efficiently workers' rights are protected, on the basis of this directive, within the EU, and how it should be modified to ensure better protection. As far as the UK is concerned, a 2004 report suggested that workers had been pressured into agreeing to work over the 48-hour limit, signing the opt-out. This included, according to European Commission research, the banking sector, where 'in some instances it was 'compulsory' for workers to sign the opt-out as it took the form of a clause of the employment contract offered to them.' Additionally, a 2011 survey of workers found that '23 per cent of long hours workers who had not signed an opt-out said they had experienced employer pressure to work longer, around half of whom thought it was understood as a condition of working at their workplace'.[48]

The Trades Union Congress found, in 2013, that the UK's use of the opt-out led to insufficient protection of workers' rights, with the applicable legislation being poorly understood and enforced, unpaid overtime being increasingly common for white-collar jobs, and the existence of expectations on the part of employers that employees should work long hours. Employers and Industry representatives argued against the TUC's findings, and generally supported the use of the opt-out as much as possible, arguing that it was necessary

[46] *Idem*, p. 7.
[47] *Idem*, p. 11.
[48] *Idem*, p. 13.

to keep business afloat, and that a signed opt-out 'provided certainty'. However, the argument that longer working hours results in greater productivity does not stand up to scrutiny, especially when looking at data from countries that rank among the most productive: in Denmark, which does not allow for the use of the opt-out, the maximum number of weekly working hours has been 37 ever since 1990.[49]

If this was the situation of employees before Brexit, it stands to reason that withdrawal from the EU, and thus inapplicability of the directive, will only lead to a further erosion of workers' rights, and the elimination of the maximum number of weekly working hours.

EU citizenship and the matter of expulsion

Ever since the Economic European Community's creation, the Treaties have limited expulsions and re-entry bans targeting nationals of other Member States, allowing them to be carried out only on grounds of public policy, public security, and public health.[50] The applicable secondary EU legislation on the matter[51] limits expulsions based on the duration of an EU citizen's residence within the territory of another Member State: in the case of stays no longer than 5 years, an EU citizen can be expelled on grounds of public policy or security; in the case of stays up to 10 years, expulsion can be carried out for 'serious' grounds of public policy and security; and if the EU citizen has resided for longer than 10 years within another Member State, expulsion can be carried out only for 'imperative' grounds of public security.[52]

As far as treatment of EU citizens by UK authorities is concerned, the matter has not always been free from criticism. For example, in 2015 detention of EU citizens had seen a sharp increase compared to 2010: 3,699 EU citizens were detained, compared to 768 in 2010, and out of the total number of detainees, EU citizens represented 11.4% in 2015, compared to 2.7% in 2010. Additionally, in the third quarter of 2016 (immediately after the Brexit referendum), EU citizens represented 17% of all new detentions, and 31% of all

[49] *Idem*, p. 22.
[50] Elspeth Guild, *What has EU Citizenship done to the Notion of Expulsion?*, in Sandra Mantu (ed.), *Expulsion and EU citizenship*, Nijmegen Migration Law Working Papers Series, Radboud University, Nijmegen, no. 02/2017, p. 5.
[51] Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.
[52] Elspeth Guild, *op. cit.*, p. 7.

enforced removals.[53] Another trend recently observed has been that of increased administrative removal of EU citizens and their family members,[54] on the basis of them 'misusing' their rights, or lacking a residence right.[55] Administrative removal differs, legally, from expulsion and is easier to order when EU citizens do not exercise a right of residence.

Generally speaking, before Brexit EU citizens acquired rights and did not need permission from the UK Home Office in order to exercise those rights, although they could apply for residence documentation, in order to consolidate their position. On the other hand, third-country nationals have always needed permission from the UK Home Office in order to enter and reside in the UK, and acquiring immigration documentation (such as visas or residence permits) is mandatory; this is the regime now applicable to EU citizens as well.[56]

Yet another practice that has raised eyebrows has been the Home Office's policy of detaining and removing EU citizens whilst treating them like third-country nationals, and overriding their EU law rights. This was the case of a Polish citizen, who had been working in the UK; during a period of unemployment, he was found by the police and detained for rough sleeping, for over five months, during which time no attempt was made to remove him from the country (as per UK policy, EU citizens were only supposed to be detained immediately prior to removal). The case reached the High Court, which found that the maximum reasonable period for detaining prior to removal would have been a week; consequently, the Polish citizen was awarded damages. This is just an instance of the Home Office's treatment of low-income EU citizens, even prior to Brexit.[57]

Brexit has cast a light over the importance and value of EU citizenship, as it has demonstrated how easy it is, in comparison, for states to determine the legal fate of people residing with their territories. A large role in the Brexit debates and outcome was played by the distinction between high-level income migrants and low-level income migrants, and the desire to expel migrants seen as not contributing sufficiently to the national economy.

[53] Matthew Evans, *Expulsion of EU Citizens in the UK*, in Mantu, Sandra (ed.), *Expulsion and EU citizenship*, Nijmegen Migration Law Working Papers Series, Radboud University, Nijmegen, no. 02/2017, p. 20.

[54] For more on whom the concept of 'family members' includes, see Roxana-Mariana Popescu, 'Opinion of Advocate General Wathelet and Judgment of the Court of Justice of the European Union in Case C-673/16, concerning the concept of 'spouse' in European Union Law', *Challenges of Knowledge Society*, 13th ed., Bucharest, 17-18 May 2019.

[55] Matthew Evans, *op. cit.*, p. 21.

[56] *Ibidem.*

[57] *Idem*, p. 23.

Following the UK's withdrawal from the EU, national authorities, no longer being restricted by EU legislation on the matter, have been able to 'engage in an administrative policy that makes it difficult for EU citizens to document their EU rights thus opening the way for terminating those rights.'[58]

Could EU citizenship be retained by a withdrawing state's nationals?

Following Brexit, British nationals have become third-country citizens, or 'foreign nationals', as far as EU Member States are concerned, which means they must now submit themselves to the immigration legislation of whichever EU state they wish to visit, work in, or reside on its territory.

Some authors have argued that people who held British nationality, and thus EU citizenship, before the UK's exit from the EU should retain their EU citizenship even following Brexit. According to this view, the loss of EU citizenship in such a context would amount to 'an arbitrary withdrawal of citizenship, prohibited by international law',[59] and it would be a mistake to assume that the loss of citizenship operates automatically when a Member State withdraws from the EU, considering there is no indication to that effect within the EU Treaties. Suggesting that this assumption relies on general principles of international law and on the Vienna Convention on the Law of Treaties, its detractors consider that this interpretation of said dispositions ignores the importance of fundamental human rights, and how these would be affected and diminished in the case of losing EU citizenship. This line of argumentation has raised the matter of the EU citizenship's legal nature.

Gaining EU citizenship is governed by national legislation on the matter, as it is tied to obtaining the nationality of an EU Member State. Thus, the States in question can prevent individuals from obtaining EU citizenship by barring them from obtaining their nationality, as is the case of certain nationals from overseas territories. However, the claim is that does not necessarily mean its loss should also be governed by national law exclusively, or that it should be entirely dependent on the continued existence of Member State nationality.

[58] Annette Schrauwen, Egle Dagilyte, Sandra Mantu, *Concluding remarks – from Brexit to understanding vulnerability to expulsion*, in Sandra Mantu (ed.), *Expulsion and EU citizenship*, Nijmegen Migration Law Working Papers Series, Radboud University, Nijmegen, no. 02/2017, p. 32.

[59] William Thomas Worster, *Brexit as an Arbitrary Withdrawal of European Union Citizenship*, Florida Journal of International Law, vol. 33, February 2022, p. 96.

Instead, the argument is that EU citizenship, being a legal bond between the EU and the individual, brings the two into a direct relationship. Nevertheless, this relationship exists only by virtue of the Member States' choice to participate in the EU, and grant their citizens access to EU benefits that way; to say otherwise – that the EU could have a legal rapport with an individual outside of the wishes of a state – would imply that an individual has a personal, independent legal relationship with an international organisation, something that would require for the individual to be a subject of public international law.

Nationality was defined by the International Court of Justice, who plays a crucial role in shaping international law, as a 'legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties'.[60] It is important to note that nationality represents, according to this definition, a 'legal' bond, even if one born from the non-legal personal connection between an individual and a certain state. Being a legal bond, it has traditionally come with associated rights and duties, although the lack of EU citizens' duties has already been discussed above.

EU citizenship is not called nationality, and the distinction has been explained as being down to the fact that nationality 'can also carry ethnic, cultural, linguistic and/or historic significance and the EU member states likely intended for EU citizenship to constitute a status distinct from member state nationality'[61], which could very well tie into the fact that it works as an added layer of protection. It is worth noting here that not all states and languages make the distinction between citizenship and nationality (for example, Denmark made a unilateral declaration on the matter, in order to reassert that EU citizenship would not override the Danish one, and used the same term – 'borgerskab' – for both), or if they do, that distinction does not always represent the same thing. Based off the fact that the EU has 24 official languages, some covering this distinction and some not, it cannot be concluded that the EU treaties used the word 'citizenship' in order to distinguish it from 'nationality', or how.

[60] *Nottebohm (Liechtenstein v. Guatemala)*, 1995 I.C.J. Reports 4 (Apr. 6). 'According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties.'

[61] William Thomas Worster, *op. cit.*, p. 108.

Whilst the acquisition of nationality remains the (mostly) unchecked prerogative of each state[62], the withdrawal of nationality is the object of certain limitations, as part of an international effort to protect fundamental human rights, with nationality being considered 'a means for ensuring greater juridical security for States and for individuals'.[63] The restriction of states' possibility to revoke nationality comes down to two factors – the international goal of preventing statelessness, and the recognition of the right of all people to a nationality.

The Court of Justice of the EU has reinforced this commitment to protecting individuals' rights by ensuring they are not arbitrarily deprived of their nationality, stating in *Rottman* that it is a 'general principle of international law that no one is arbitrarily to be deprived of his nationality, that principle being reproduced in art. 15(2) of the Universal Declaration of Human Rights and in art. 4(c) of the European Convention on nationality. When a State deprives a person of his nationality because of his acts of deception, legally established, that deprivation cannot be considered to be an arbitrary act'. The CJEU specified that, when deciding to revoke the nationality of an individual, Member States must take into consideration the consequences of the associated loss of EU citizenship, and thus must make sure the measure is proportionate, serves a legitimate purpose, and is not arbitrary. The CJEU could impose these additional criteria for the Member States to follow because, in its view, any loss of EU citizenship 'falls, by reason of its nature and its consequences, within the ambit of EU law.' However, if nationality was obtained through fraud, and is subsequently annulled, the person never gained EU citizenship in the first place, and the Member State is not compelled to follow the criteria stated in *Rottmann*.

The restriction on arbitrary revocation of nationality includes both procedural protection and substantive protection. On a procedural level, a state must have a legal basis for the revocation of nationality and must provide for legal process to challenge a revocation decision, whilst on a substantive level, the state must have a 'legitimate aim that is proportionate to an important state interest,' in its absence the procedural aspects being insufficient to justify the revocation.

[62] Barring cases of a state ratifying an international convention on the matter, like the Convention on the Reduction of Statelessness; however, participation to such a convention is still the state's choice and expression of its sovereignty.
[63] William Thomas Worster, *op. cit.*, p. 99.

Art. 7 of the European Convention on Nationality[64] allows for the parties to revoke nationality in the following cases: 'voluntary acquisition of another nationality; acquisition of the nationality of the State Party by means of fraudulent conduct, false information or concealment of any relevant fact attributable to the applicant; voluntary service in a foreign military force; conduct seriously prejudicial to the vital interests of the State Party; lack of a genuine link between the State Party and a national habitually residing abroad; where it is established during the minority of a child that the preconditions laid down by internal law which led to the *ex lege* acquisition of the nationality of the State Party are no longer fulfilled; adoption of a child if the child acquires or possesses the foreign nationality of one or both of the adopting parents.'

At present, the EU has yet to ratify the European Convention on Human Rights,[65] as per its art. 6 TEU, and has not ratified any other human rights treaties either, but the CJEU has repeatedly clarified that the EU is committed to the protection of human rights as general principles of law, and that it must interpret those rights in light of the Universal Declaration on Human Rights, as well as the ECHR. In addition, the Treaty of Lisbon has included the Charter of Fundamental Rights of the European Union among the EU's primary law sources, granting it equal legal force to that of the EU treaties.[66]

Related to the Member States' wide margin of appreciation in so far as acquiring their nationality is concerned, it must be noted that they have the possibility of prohibiting some of their own nationals from acquiring EU citizenship – it is the case of nationals with a connection to overseas territories.

Upon its accession to the European Communities in 1973, the UK submitted a special declaration, revised in 1981, that limited the acquisition of EU citizenship to 'British Citizens', thus excluding other categories of UK nationals - 'British Dependent Territories Citizens,' 'British Overseas Territories Citizens,' 'British Subjects without Citizenship,' and 'British Protected Persons' from becoming EU citizens, despite international law (and UK law for certain purposes) treating them all as British nationals. In 2002, some of the 'British

[64] Available at https://rm.coe.int/168007f2c8 (accessed on 1 May 2022).
[65] Available at https://www.echr.coe.int/Documents/Convention_ENG.pdf (accessed on 1 May 2022).
[66] For more on EU primary law, see Augustina Dumitrașcu, Roxana-Mariana Popescu, *Dreptul Uniunii Europene. Sinteze și aplicații*, 2nd ed., Universul Juridic Publishing House, Bucharest, 2015.

Overseas Territories Citizens' gained the status of 'British Citizens'. Consequently, it became possible for a British national, if also a British Overseas Territories Citizen, to renounce British citizenship and retain British Overseas Territories Citizenship, thus renouncing EU citizenship. This means that, until Brexit, the only comprehensive definition of 'British nationals' existed strictly in terms of EU law. Similarly, Danish nationals with a connection to the Faeroe Islands never gained EU citizenship, despite holding Danish nationality; this is because the Faeroe Islands were excluded from being part of the EU, according to Denmark's accession treaty.[67] Another special case is that of Greenland: it joined the EU as part of Danish territory, and its nationals gained EU citizenship, but it later obtained autonomy from Denmark and withdrew from the EU. However, its citizens retained EU citizenship.

The conclusion, following these arguments, would be that UK nationals qualifying as British citizens according to UK law, who have acquired EU citizenship validly, before Brexit, who do not actively renounce it, and who continue exercising their rights as EU citizens, should retain EU citizenship. Considering the nature of such a category of individuals, it would naturally dwindle until it disappeared, as it could not be supplemented with new EU citizenship holders.[68]

An example put forward by those supporting the idea of British nationals retaining EU citizenship even after Brexit has been that of India and Bangladesh's latest exchange of outstanding micro-enclaves which, unlike previous exchanges, gave the enclaves' residents the possibility to choose which nationality they wanted to hold after the exchange.[69] This would be just one example of the shift towards allowing residents in transferred territories to choose their nationality.

A different solution to this dilemma, proposed by those who do not believe it a viable argument that British nationals should retain EU citizenship even after Brexit, has been that of constituting an associate citizenship of the EU. Officials involved in the Brexit negotiation process declared themselves in favour of allowing British citizens to hold on to certain rights, such as electoral rights and the freedom of movement 'for those citizens who on an individual basis are requesting it', whilst EU law scholars argued in favour of introducing a special

[67] William Thomas Worster, *op. cit.*, p. 113.
[68] *Idem*, p. 133.
[69] *Idem*, p. 101.

status (inspired, partially, from the 'British Protected Persons' status enjoyed by individuals from the former British protectorates) for citizens of states that have withdrawn from the EU, as long as they continue to reside within the EU, as well as for citizens of EU Member States who live in the state that has withdrawn. Other scholars believe that the concept of EU citizenship needs to be adapted so that it becomes much harder for it to be withdrawn, ensuring a (nearly) permanent status; thus, whilst granting nationality would still fall under the scope of internal law and would be governed by Member States, its withdrawal would be a matter of EU law, and near impossible.[70] To that effect, in 2018 EU citizens launched a citizens' initiative, as per art. 10(4) TEU and art. 24 TFEU, asking the Commission to put forward a proposal regarding a way to ensure that, once obtained, the rights derived from EU citizenship are permanent.

The concept of 'associate EU citizenship' has been criticised as 'misrepresenting the core foundations of EU citizenship as it currently stands', as well as being unadvisable from a pragmatic point of view.[71] Allowing the nationals of withdrawing Member States to retain EU citizenship would mean a weaker position for the EU during the subsequent negotiations, since it couldn't leverage their status in order to obtain as many benefits as possible for its own citizens. In practice, it would mean that the withdrawing state's nationals would retain all *their* rights, despite their state of nationality (in our case, the UK) no longer being an EU member, whilst the citizens of EU member states would be guaranteed no rights on the withdrawing state's territory.

Another point of criticism that can be brought forward is the fact that, by recognising an associate EU citizenship, the EU would claim as its own citizens of a third country that has not consented to such a recognition. Additionally, these so-called 'associate citizens', who might not desire the status, would enjoy all the rights that come with EU citizenship without even having to reside on its territory, whilst third-country citizens can reside in the EU for years, contribute to its social security systems, be part of its local communities, yet not

[70] Dimitry Kochenov, Martijn Van den Brink, *Against Associate EU Citizenship*, Journal of Common Market Studies, vol. 57, no. 6, July 2019, p. 1371.
[71] *Idem*, p. 1367.

benefit from EU citizenship rights as long as they don't have the citizenship of a Member State.[72]

As the CJEU has repeatedly affirmed in its case law, EU citizenship 'is destined to be the fundamental status of nationals of the Member States', and the formulation of art. 20 TFEU makes it clear that EU citizenship complements – and, thus, is dependent on the existence of – Member State nationality; additionally, it's been established, also via they case law of the CJEU[73], that those holding a 'partial' nationality of a Member State cannot enjoy the full rights and benefits associated with EU citizenship. 'Court's case law that put direct pressure on the member states and triggered the gradual evolution of national citizenship laws confirm that EU citizenship depends on, and has no life independent from, the nationalities of the member states'.[74]

It is an acceptable approach, on the other hand, to extend certain rights and benefits currently enjoyed by EU citizenships to third-country nationals – as long as this is done on the basis of an international agreement concluded between the EU and the third party in question.[75] In such a scenario, all criticism regarding the lack of democracy (if disregarding the desire to leave the EU, and extending EU citizenship to people who might not want to retain it) or the disadvantageous position it puts the EU in would be nullified, as the EU would have the possibility to negotiate certain benefits for its own citizens, in exchange for allowing third-country nationals to retain EU citizenship. A similar arrangement can be seen in the case of EEA and Swiss nationals, who may move freely within the EU, and enjoy relevant rights, without being associate EU citizens.

Conclusions

In addition to the well-known and researched economic benefits brought about by participation in the EU, it is important to observe that EU citizens directly enjoy numerous rights, that impact much more than just their economic well-being. EU citizenship, when

[72] *Idem*, p. 1369.
[73] Case C-192/99 *Kaur*, ECLI:EU:C:2001:106.
[74] Dimitry Kochenov, Martijn Van den Brink, *op. cit*., p. 1373.
[75] Regarding the prospects and subsequent outcome of such a negotiation, see Augustin Fuerea, *Brexit - limitele negocierilor dintre România și Marea Britanie*, Revista de Drept Public, no. 4/2016, Universul Juridic Publishing House, Bucharest, and Augustin Fuerea, *EU-UK Brexit Agreement and its main legal effects*, Challenges of the Knowledge Society, 14th ed., Bucharest, 21 May 2021.

measured against the citizenship of individual states, both within and outside of the EU, ranks as one of the most attractive ones, alongside the US nationality and above Canada's, Australia's, and Japan's, as it gives citizens access to residence and work across the EU Member State, the EEA (and thus Iceland, Norway, and Liechtenstein), Switzerland, and overseas territories of the EU Member States, such as the Canary Islands and the French Guyana.[76]

All these rights are particularly relevant within the EU's territory, but EU citizenship plays an important role at an international level as well,[77] as it grants EU citizens located in third countries the possibility of requesting diplomatic protection and help from the consulates of *any* EU Member State, if their own does not have a consulate in said third country. This is particularly relevant for smaller states, that don't have a wide network of consulates. Also in terms of external relevance of EU citizenship, the majority of EU Member States have transferred to the EU competence in the matter of visas. As one of the core values of the EU is to prevent discrimination between and against its own citizens, the consequence of this transfer of competence being that the EU must ensure that all its Member States' citizens must have the same level of access to third-countries, regardless of the EU Member State that issues their documents. Thus, if a third-country that has been granted visa-free access to the EU decides to block or hinder travel from a specific EU Member State to its own territory, said third-country should see its visa-free status revoked by the EU. So far, the one example of such behaviour has been that of the US, who continues to request visas for citizens from certain EU Member States, despite having received visa-free access to all of the EU. On the other hand, countries such as Australia and Canada were willing to change their visa requirements, in order to preserve visa-free access to the entirety of the EU for their citizens, demonstrating the influence that the EU has in this area, and the benefits it brings to its citizens.[78]

[76] Dimitry Kochenov, Justin Lindeboom, (ed.), *Kälin and Kochenov's Quality of Nationality Index*, Hart Publishing House, Oxford, 2020, p. 216.
[77] For more on this topic, see Mihaela-Augustina Dumitrașcu, Oana-Mihaela Salomia, *The European Union as international actor: the specificity of its external competences*, Analele Universității din București, seria Drept, C.H. Beck Publishing House, Bucharest, 2017.
[78] Dimitry Kochenov, Justin Lindeboom, (ed.), *op. cit.*, p. 219.

All this has led to Brexit being called by scholars 'the most substantial loss of individual rights in Europe since the fall of Yugoslavia in the 1990s',[79] partly because this can be considered a generational loss – even static citizens, who might not immediately feel the loss of EU citizenship, could have children and grandchildren who would likely want, at some point, to travel, study, or work in another EU Member State.

As we reject the notion that, based on current legislation, it would be legally possible for nationals of withdrawing Member States to retain EU citizenship, unless that state and the EU conclude an international agreement to that effect, we consider that, going forward, it is important for the EU, who is committed to protecting its citizens and human rights and welfare in general, to establish better safeguards, in order to prevent individuals from losing rights they've gained as nationals of a Member State, whether that loss is caused by said State withdrawing from the European Union, or simply by its decision to revoke an individual's nationality.

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[79] Jo Shaw, *Citizenship and Free movement in a Changing EU: Navigating an Archipelago of Contradictions*, in Benjamin Martill, Uta Staiger (eds.), *Brexit and Beyond: Rethinking the Futures of Europe*, University College London Press, 2018, p. 158.

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