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**‘Citizens’ Rights and Social  
Rights: the routes for UK  
Citizens in Cyprus’  
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# Research Framework

- **Problematic:** What is the way forward for UK Citizens in Cyprus to enjoy their rights in the Brexit context? **Alternative routes – political, legal.** What principles apply?
- Reference should be made initially to the *Residence Rights and Residence Documents in the RoC paper, Version 1, September 2018.*
- **Research questions:**
  - To what extent and on what basis the RoC paper is a recognition of continued EU Citizenship?
  - Does the RoC go far enough, especially in the case of a No-Deal? Can there be a deal on Citizens without an overall agreement?
  - What is the impact of the political process on any legal commitments made or to be made? Will UK Citizens in Cyprus retain the same entitlements?
  - What is the role of EU Citizenship and the proposed framework with respect to the SBAs?

Implementing the agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community:

***RESIDENCE RIGHTS AND RESIDENCE  
DOCUMENTS IN THE REPUBLIC OF CYPRUS***



# But first, why does EU Citizenship *still* matter?

- It is not a simple academic exercise:
  - increasing **significance** attributed to EU citizenship in recent years by the ECJ;
  - gradual evolution through ECJ jurisprudence, from a **mostly symbolic concept to a basis for claims over concrete legal rights**;
  - Question: can the **prospect of the loss of EU citizenship**, in an EU exit, **provide a basis for individual claims for its preservation**?
- In the implementation of Art50TEU, common preference/need for a **withdrawal agreement** to regulate the future relations between the EU and withdrawing MS, in a **comprehensive** and **orderly** manner.

# Brexit: why does EU Citizenship *still* matter?

- If no withdrawal agreement there is every probability of legal disputes surrounding the **continuing validity of arrangements** entered into by or between the EU and withdrawing MS on a large range of issues.
- Risk of **legal uncertainty** over issues of relevance to the free movement and establishment of persons:
  - **rights of the withdrawing state's citizens** (especially – but not only – those who have exercised their EU primary law rights of free movement and establishment);
  - **Rights of the nationals of other MS** active or established in the withdrawing state.
- No obligation of negotiation on the part of withdrawing MS under Art50TEU but role of **Art4(3)TEU**.
- Failure to negotiate an agreement is **legally permissible** but would leave unregulated the **future relationship** between the EU and withdrawing state – Adverse effect on Citizens and inhabitants.

# Could EU citizenship survive EU exit?

- Art9 TEU and Art20(1) TFEU – would suggest NO as EU citizenship was intended to be autonomous from but secondary to MS nationality.
- **ECJ case law:**
  - EU citizenship under Art18 TFEU could be treated as a **shield** that MS nationals could involve as protection against discrimination on grounds of nationality.
  - protection granted to EU citizens whenever they exercise their **autonomous right as EU citizens** under Art21 TFEU.
  - Following *Rottmann* and *Ruiz Zambrano*: **EU citizenship appears as an autonomous (rather than a derivative) status**, linked to the exercise by its beneficiaries of their rights of free movement and residence.
- Principle that EU fundamental freedoms will **prevail** if they conflict with national citizenship law. Potential to **superimpose the concept of EU citizenship over that of MS nationality**. SO EU citizenship need not be **automatically lost through the loss of MS citizenship**.
- **How to achieve this?**

# EU exit scenario and judicial review

- In Brexit scenario, loss of EU citizenship **not the consequence of unilateral administrative action taken by the departing MS, but conscious decision to exit.**
- Such decision not amenable to **judicial review** at EU level under *Rottmann* or *Ruiz Zambrano*.
- **No express obligation on withdrawing MS** to take action to legally protect the enjoyment by individuals of their former EU citizenship rights, notwithstanding the act of withdrawal.
- No formal obligation on **other EU MS** either.
- But:
  - ‘negotiation clause’ of Article 50(2) TEU militates **against an automatic termination of EU citizenship** rights;
  - durable link allegedly created through EU citizenship.
- **Political and legal balancing exercise** based on principles:
  - Citizens **deserve protection**. Duty to **mitigate** adverse consequences of withdrawal for Citizens (loss of their citizenship rights).
  - **Minimum duty** on withdrawing MS to negotiate bona fide with its partners, taking into account the principle of sincere cooperation and loyalty.

# Brexit and Cyprus: Rights of UK Citizens

- Draft Withdrawal Agreement (WA) and Joint Report (JR), December 2017 – **Guiding Principles on Citizens:**
  - ‘Effective exercise of rights derived from Union law and based on past life choices, where those citizens have exercised free movement rights by the specific date’ (para.6, JR) + large personal scope
  - Non-discrimination (para.11 JR);
  - Principles of good administration, transparency, efficiency, no administrative burden, evidential flexibility, proportionality, due process, objective assessment and discretion in favour of the applicant, more favourable national provisions (paras.17-18, 22 JR)
  - Consistent interpretation by both Parties.
- **Legal effects of Citizens’ Part:**
  - Legal effect of these rights (Para.34 JR) + direct reliance on rights/disapplication of incompatible rules (direct effect and primacy) (para.35 JR)

# RoC Paper on residence rights of UK Citizens – Main Points

- Based on Draft WA and transitional period (30/3/19-31/12/20)
- **Personal scope for residence, RoC paper:**
  - Permanent residence (PR): UK nationals and family members who, by end of transitional period, have been continuously resident in Cyprus for 5 years;
  - Residence: UK nationals and family members who already reside in Cyprus or arrive by 31/12/20 but will not yet have been continuously resident in Cyprus for 5 years. Can stay until they reach the 5-years allowing them to apply for PR;
  - Rights: **UK nationals and family members covered by WA** will be able to continue their lives in Cyprus ‘with the same access to work, study, benefits and public services that they enjoy now’, subject to the specific provisions in WA.
- UK nationals and family members falling under the scope:
  - exercising their rights of residence before the end of transitional period and thereafter OR if not residing in Cyprus by then, had previously resided without acquiring PR provided they maintain continuity of residence as defined in current free movement rules OR if not residing in Cyprus by then, had acquired PR provided their absence will not exceed 5 consecutive years.
  - Family members (only) residing overseas on 31/12/20 wishing to join a UK national covered above, given that the relationship existed at or before that date and continues to exist when the person wishes to come to Cyprus.

# RoC Paper on residence rights of UK Citizens – some criticisms

- Copying part of the EU substantial provisions NOT the same as guaranteeing these rights at the same level of protection. Based on the **flawed assumption** that a 'literal transfer' of rights brings the same level of protection.
- **Principle of supranational protection of Citizens' rights** under the WA – comes close to their current status (although with inferior rights). But in the event of a **No-Deal**, what happens to the spirit of supranational protection? Left at the discretion of EU27 and/or MS.
- **Rights other than residence are not covered expressly:** social security, professional recognition, pension, health, right to work. All rights derive from lawful residence and/or acquisition of PR. **To what extent do the personal and material scope of rights defer? If no transitional period?**
- Nature of **proposed system is both declaratory and constitutive:** principle of continuity of residence for UK nationals and family members residing in territory of RoC until end of transitional period AND as of 1/1/21, they can get a new residence document. For others, application process based on the proof of residence.
- No mention of **judicial redress**. Protection should be in favour of UK national/applicant.
- Incorporation of citizens' rights into primary legislation would be recommended.
- No contingency plans.

# Concluding Remarks

- The RoC paper lacks sustainability in its approach to continued EU Citizenship – too literal and lack of legal certainty.
- The RoC paper does not go far enough, especially in the case of a No-Deal. It is doubtful there can be a deal on Citizens without an overall agreement; RoC needs to be proactive (as it is with the CIP). No mention in paper of property rights of UK nationals or of their contribution to local economy.
- The impact of the political process on any legal commitments made or to be made is unclear. In effect, it is still uncertain how UK Citizens in Cyprus will retain their entitlements.
- The proposed framework does not seem to be applicable to UK nationals in the SBAs as it only covers the territory of the RoC. UK nationals are however based there and continue being treated as a ‘sub-category’ of with no/little access to citizenship rights (SBAs do not count as qualifying territories for nationality purposes). Role of EU Citizenship important there too.
- Why losing rights without a fight? Concept of associate EU Citizenship.