Ref. D(2017)1728

Jerzy Buzek
Chair of the Conference of Committee Chairs
PHS 08B046
Brussels

Dear Mr Buzek,

Following your request, please find attached the Committee on Legal Affairs’ preliminary assessment of the effects of Brexit in its policy areas, as approved by the committee’s coordinators.

The assessment contains distinct sections on civil justice cooperation, company law, intellectual property rights, the Statute for Members and the Staff Regulations, together with an introduction touching on better law-making, international law and certain other legal questions.

The assessment comes to the conclusion, as one might expect, that Brexit raises considerable challenges in all policy areas. This committee sincerely hopes that these challenges may be overcome by means of agreements which satisfy the needs of both the European Union and the United Kingdom.

One important preliminary question affecting all policy areas is the extent to which transitional arrangements could be envisaged legally. As we have mentioned in our paper, it would seem to us that such arrangements could only be adopted by international agreement or a protocol to the Treaties, which would require the unanimous agreement of the Member States and ratification in accordance with their national constitutional traditions. It would seem difficult, if not impossible, to reach such an agreement before the end of the period provided for in Article 50.
As regards the substance of any such arrangements, to allow the United Kingdom to continue to participate in the Single Market without respecting the judgments of the Court of Justice of the European Union or permitting freedom of movement of EU citizens would be tantamount to allowing a national football association to decide that it will set its own rules on the size of the ball, the number of players on the field and the width of the goal and do away with a referee, whilst purporting still to be able to take part in the European championships.

The committee remains at your disposal for any further elucidation.

Yours sincerely,

[Signature]

Pavel Svoboda
REPORT ON THE CONSEQUENCES OF BREXIT

General introduction

The Committee on Legal Affairs responsibility in particular for the application of EU law, better law-making and international law prompts the following remarks.

The withdrawal agreement referred to in Article 50 of the TEU serves the purpose of making the event of a Member State leaving the EU as smooth as possible. The situation following the UK referendum of 23 June 2016 is, however, absolutely unprecedented and whatever direction the upcoming negotiations may take, the conclusion of an agreement will have to find its way through uncharted territory.

Some principles will have to be respected as regards individuals – whether they are UK nationals or not, and whether they are based in the UK or elsewhere in the EU – whose rights may be adversely affected by the UK leaving the EU. In particular, special attention will have to be paid to the rights acquired or in the process of being acquired on the date on which the withdrawal of the UK takes effect. Indeed, the protection of such rights is part of the general principles of EU law, whose respect should always be pursued by the Member States, including in the context of the negotiations under Article 50 TEU. The protection of acquired rights applies to many fields of EU law. In those for which the Committee on Legal Affairs is responsible, it will be of the utmost importance in relation to EU staff members.

Important interpretative principles will have to apply in order to understand the very scope of the withdrawal agreement as described in Article 50(2) TEU. This provision refers to an agreement with the withdrawing State 'setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union'. This provision needs to be read in conjunction with Article 50(3) TEU, pursuant to which '[t]he Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement'. Combined together, the two provisions seem to mean that the withdrawal agreement cannot but have a clear object (i.e. how to disentangle the EU and the withdrawing State from their reciprocal rights and obligations and, at the same time, create the basis for their future relationships) and a definitive effect (i.e. the cessation of the withdrawing State's rights and obligations established by the Treaties).

This also means that transitional arrangements could not be included in the withdrawal agreement. Article 50 TEU does not mention any category of agreements between the EU and the withdrawing State other than the withdrawal agreement and (indirectly) the agreement on their future relationships. What is more, if the withdrawal agreement could include transitional arrangements, the definitive effect referred to in Article 50(3) TEU would not occur and both the EU and the withdrawing State might find themselves bogged down in an area of legal uncertainty. Last but not least, transitional arrangements made in view of a future, more comprehensive agreement could last far longer than expected, should the conclusion of such agreement be delayed, and, in any event, they would amount to circumventing the two-year deadline referred to in Rule 50(3) TEU.

Failing a change to the Treaty, the only way to make transitional arrangements could be by means of an international agreement concluded by the withdrawing State and the other 27 Member States outside EU law, possibly at an Intergovernmental Conference, which would have to be held before
the end of the Article 50 period. Any agreement would have to be unanimous and, in all probability, examined by the Court of Justice. It would also have to be approved by national parliaments in accordance with their respective constitutional traditions.

When the UK leaves the EU after the conclusion of the Article 50 procedure, it will also be necessary to carry out a certain amount of work in order to remove all references to the UK and its courts and other agencies from EU legislation. This could be done by a single legislative act based probably on the flexibility clause.

**International law and acquired rights**

It has been suggested that general international law may provide a solution to protect the acquired rights of individuals which currently benefit from the freedoms afforded by the European Union's legal framework. This is far from certain. The principle of acquired rights may well apply to the continuance of specific entitlements acquired validly in the past—for example, the right to a pension or the right to be considered the owner of real property. However, the principle of acquired rights cannot logically be extended in such a way as to confer an unrestricted ongoing entitlement to specific advantages in cases where the legal framework for those advantages has fallen away, as is the case when a Member State leaves the European Union. It cannot, therefore, be considered that a person who is no longer a Union citizen will continue to have unrestricted rights such as that to live, work and study in the European Union, or to benefit from social security arrangements such as reciprocal healthcare entitlements unless, of course, as may be hoped, specific provisions are made for the continuance of such rights. As far as the conditions under which UK nationals may reside in other Member States are concerned, it is submitted that these are a matter of national law. The fact that it appears to be particularly difficult for foreign nationals, even if married to UK nationals or born in the UK, to acquire permanent residence status or British nationality may colour Member States' approach to this matter.

Finally, it should be noted that a number of international agreements involving the United Kingdom are linked to the position of the United Kingdom as a member of the European Union. How such agreements will be affected by Brexit is unclear. The best example is, perhaps, the Northern Ireland peace agreement, known as the Good Friday Agreement— the agreement makes it abundantly clear that the fact that both parts of Ireland and the United Kingdom are within the European Union is a basis for the agreement. Moreover, the fact that Brexit could result in the reintroduction of border controls and controls on the free movement of persons between Ireland and Northern Ireland means that this is a question for the EU, and not only Ireland and the UK.

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2 Interestingly, the Great Repeal Bill promised by Prime Minister May will repeal only the European Communities Act 1972. It seems that all European legislation which has not already been transposed into primary national law (regulations, instruments incorporated by secondary legislation) will be adopted into UK law. Among other things, this will have the bizarre effect that the UK will recognise and enforce judgments from EU countries under the rules of Brussels Ia, whereas the EU countries will not recognise and enforce judgments from the UK under those rules, but under their national rules of private international law, which are much less favourable than the EU rules.
POLICY AREA: CIVIL JUSTICE COOPERATION

Short introduction

In the area of judicial cooperation in civil matters, Brexit will of course have a major impact. However, this is limited by the fact that the United Kingdom has an opt-in right, and has frequently chosen in recent years not to opt in to legislation in the field of judicial cooperation in civil matters. For example, the UK does not take part in the Rome III Regulation (Regulation (EU) No 2010/1259) on the law applicable to divorce, the Successions Regulation (Regulation (EU) No 2012/650), which facilitates inheritance across different Member States, the European Account Preservation Order (Regulation (EU) No 2014/655), which concerns the freezing of monies held in bank accounts, or the Justice Programme 2014-2020 (Regulation (EU) No 2013/1382), which funds judicial training and cooperation schemes.

Generally speaking, judicial cooperation in civil matters is based on the mutual recognition and enforcement of judgments and other decisions. Brexit means that that mutual recognition and enforcement can longer take place, at least not within the EU framework. Such recognition that is based on conventions drawn up by the Hague Conference on Private International Law can continue.

First part - Impact on any pending or imminent procedure

There are at present only a limited number of pending legislative procedures in the area of judicial cooperation in civil matters. One major file is the review of the Brussels IIa Regulation on jurisdiction, recognition and enforcement of decisions in matrimonial matters and matters of parental responsibility, and on international child abduction (2016/0190(CNS)). The review could very well have a different outcome in view of Brexit, as there would no longer be a need to take account of the specific features of the British legal system. Despite the UK Government’s announced intention to trigger the Article 50 procedure, it has nevertheless decided to opt in to the revision of the Brussels IIa Regulation.

Second and third parts - provisions to be included in the “Exit agreement” and content of the future EU-UK relations agreement

The most important legislation in the area of civil justice cooperation is the Brussels I Regulation (Regulation (EU) No 2012/1215) on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, which would no longer apply between the UK and the Member States, meaning that judgments will no longer be recognised or enforced in the other jurisdictions automatically. Older bilateral agreements such as that existing between Germany and Britain may go some way to bridging the gap, but will not suffice completely. Brussels I could be replaced by the Lugano Convention (as is the case for Switzerland and others) or by an ad hoc convention (as is the case for Denmark, which is excluded from civil justice cooperation). That being said, as it currently stands, the Lugano Convention was signed by the EU and not the individual Member States. According to Art. 70, the United Kingdom is not one of the states entitled to join the Convention.

As for the Rome I and II Regulations, Brexit would mean that the UK no longer has to follow the EU’s rules on which law is applicable in international contexts. The Rome I Regulation (Regulation (EC) No
2008/593) concerns the law applicable to contracts, and the Rome II Regulation (Regulation (EC) No 2007/864) concerns the law applicable to non-contractual obligations.

The situation with regard to the Hague Jurisdiction Convention of 2005 also needs to be considered since it was ratified by the EU on behalf of all Member States, but not by the States themselves. Its future should also be addressed during the EU-UK relations negotiations. The same is true of the Brussels IIa Regulation (mentioned above in the context of its revision — Regulation (EC) No 2003/2201), which would mean that only the Hague Convention rules would apply regarding decisions on divorce, child custody and child abduction.

Fourth part - any other relevant element

Overall, in the area of judicial cooperation in civil matters, Brexit will cause considerable complications for businesses and citizens. Judicial decisions will no longer be automatically recognised, which is a danger to legal certainty and increases the likelihood of incompatible legal decisions or statuses. Whilst the situation of past judicial decisions which were punctually recognised at a specific date in the past may seem clear, this may not be the case for past decisions where recognition needs to be permanent. Citizens or businesses could face legal difficulties if their legal situation deriving from a judicial decision is no longer recognised for the future. Even if the UK and the EU were to adopt a series of agreements in this field, on the same lines as Denmark has, the problem would arise of the interpretation by the European Court of Justice of the legislation.
POLICY AREA: COMPANY LAW

First part: Impact on any pending or imminent procedure


In case Brexit takes effect before the time-limit for its transposition (for the most part, 2 years after publication), the UK will not be obliged to implement this directive. Even if Brexit takes place after that date nothing guarantees that the UK will transpose it. In any case, after Brexit becomes effective, shareholders of UK companies will not enjoy rights under this directive.


The proposal's key objective is to reduce the most significant barriers to the free flow of capital stemming from differences in Member States' restructuring and insolvency frameworks. The aim is for all Member States to have in place key principles on effective preventive restructuring and second-chance frameworks, and measures to make all types of insolvency procedures more efficient by reducing their length and associated costs and improving their quality. More specifically, such frameworks aim to help increase investment and job opportunities in the single market, reduce unnecessary liquidations of viable companies, avoid unnecessary job losses, prevent the build-up of non-performing loans, facilitate cross-border restructurings, and reduce costs and increase opportunities for honest entrepreneurs to be given a fresh start.

The legislative procedure and future inter-institutional negotiations will take place concurrently to negotiations on Brexit (if Article 50 is triggered in late March as announced by Theresa May). The UK is participating in the Council as it is still a full member of the EU, and therefore it might influence and help to shape the Council's general approach and future negotiations with Parliament. However, it might be that the UK will never be obliged to implement this directive after its eventual adoption because Brexit might have intervened in the meantime. Even if Brexit has not taken place before its adoption, it is doubtful whether the UK will ever transpose it.

Country-by-country reporting on income tax information: On 12 April 2016, the Commission referred to the Council and to the European Parliament a proposal for a Directive amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (2016/0107(COD))('country-by-country reporting').

The legislative procedure and future inter-institutional negotiations will take place concurrently to the negotiations on Brexit (if Article 50 is triggered in late March as announced by Theresa May). The UK is participating in the Council as it is still a full member of the EU, and therefore it might influence and help to shape the Council's general approach and future negotiations with Parliament, but it will not be obliged to transpose this directive in case Brexit takes effect before its eventual adoption. Even if Brexit has not taken place before its adoption, it is doubtful whether the UK will ever transpose it.
Cross-border mergers and divisions: In its Work Programme 2017, the Commission has announced that it will present a company law initiative to facilitate the use of digital technologies throughout a company’s lifecycle and cross-border mergers and divisions.

The presentation of this initiative and negotiations on it will be simultaneous with Brexit negotiations (if Article 50 is triggered in late March as announced by Theresa May). At this stage, it is too early to foresee what the content of those proposals will be and what attitude the UK will take in relation to those new files.

Second and third parts: provisions to be included in the “Exit agreement” and content of the future EU-UK relations agreement


The main immediate effect of the UK decision to leave the EU is that the UK Financial Reporting Council’s (FRC) ability to influence EU policy in this field will wane, and when Brexit becomes effective it will cease to be a member of the Committee of European Auditing Oversight Bodies (CEAOB). In fact, according to Article 30(2) of the Statutory Audit Regulation the CEAOB shall be composed of one member from each Member State. Therefore, the status of the UK Financial Reporting Council after Brexit would be an element to consider during Brexit negotiations.


When Brexit becomes effective it is likely that any UK companies that have adopted SE status would lose that status. If they want to maintain it, they may need to relocate their registered office if the UK becomes a non-EEA state following a Brexit.

The Insolvency Proceedings Regulation: Cross-border insolvency matters are largely regulated by the Regulation (EU) No 2015/848 of the European Parliament and of the Council on insolvency proceedings, which is based on Article 81 TFEU and in which the UK decided to take part (recital 87) pursuant to Protocol No 21 to the Treaties.

With Brexit, this Regulation will no longer apply unless the UK incorporates its contents into domestic law or makes other arrangements to maintain it. Cross-border insolvencies will become more complex as there will be jurisdictional issues to determine. Further, UK Insolvency professionals (notably liquidators) will not be automatically recognised as competent in other Member States.

Fourth part: any other relevant element
短介绍

商标权法规的协调化始于欧盟，1989年商标指令，作为单一市场建设的一部分。共同体商标是随后创建的一个规则，几年后允许欧盟范围内商标的注册、监控和执行，而不需要在每个国家单独注册。欧盟知识产权局（EUIPO，之前为OHIM）也于该规则下建立，负责管理商标的注册、申诉和作为各成员国商标局的中心，包括英国知识产权局（UKIPO）。规则和指令在2015年修订，并且正在实施。它们仍然有效。

脱欧的主要影响是（硬）脱欧将导致进一步协调化。英国的商标权在EEA结束，UKIPO的参与也将结束，欧盟层面的协调活动和项目也是如此。两个办公室的关系将结束（如成本分担、预算弥补和EU商标权）。英国的商标权将不再适用。英国的公司将无法为来自其他国家的公司注册EU商标权，就像今天一样。目前没有实质性的立法修正案需求。硬脱欧可能影响预算重新分配和实际的协调活动。

当谈到版权法时，所有的行动都是为了协调。首先，国家法律在共同指令的指导下，旨在尊重领土性原则，即每个成员国授予并认可本国法律的版权保护。结果，版权被授予和保护在所有成员国。与工业产权不同，如专利和商标权，没有跨欧洲的版权法。创建一个这样的标题需要成员国的共同放弃。

目前的提案是关于在2016年9月提出的版权提案，它提出了一个解决点，即在更协调的国家法律基础上。硬脱欧将简单地结束进一步的协调化。

第一部分：任何待定或即将进行的程序

N/A

第二部分：包含在“退出协议”中的条款
The agreement should consider UKIPO’s possible participation in the activities and cooperation projects of EUIPO. Any consequences of the financial tie between the two offices coming to an end will also have to be looked into (e.g. any continuing offsetting of costs incurred in projects, flow-back of surplus into EUIPO budget).

Third part - content of the future EU-UK relations agreement

An EU trademark would cease to have effect on UK territory. UK companies would continue be able to register EU trademarks in the same way as any company from a third country is today.

Fourth part - any other relevant element

Taking into account the cultural significance of the English language, the financial importance of the Anglo-American repertoire in the music business, the relatively large size and influence of the film and television industry, and the global influence of research and development institutions in the UK, it should not be ruled out that UK actors in these areas will continue to exert considerable influence on the development of copyright law in the EU.
POLICY AREA: INTELLECTUAL PROPERTY RIGHTS (Unitary Patent)

Short introduction

According to the latest state of play in the implementation of the unitary patent package, all the rules necessary for the implementation of Unitary Patent (UP) protection have been adopted and the legal, administrative and financial implementation of Unitary Patent (UP) Protection has been completed. UP protection is therefore ready to enter into operation subject to the entry into force of the Unified Patent Court Agreement (UPCA).

However, the entry into force of the UPCA is subject to ratification by thirteen participating Member States, including the three participating Member States in which European patents are most frequently validated, i.e. Germany, France and the United Kingdom. Eleven Member States out of the 26 participating Members States have ratified the UPCA to date. Ratification by both the UK and Germany is still pending and the unclear situation of the UK within the EU makes the whole process uncertain. It was therefore legitimate to speculate in the past few months whether Brexit might not put the whole system at risk until 28 November 2016, when the UK government announced that it was proceeding with preparations to ratify the Unified Patent Court Agreement.

First part: Impact on any pending or imminent procedure

The entry into effect of the UPCA mainly depends on its ratification by the UK. The UP system will come into effect only when the UPCA has been ratified by thirteen participating Member States, including the three most active countries when it comes to patent validation. As things stand, those three countries are Germany, France and the UK. France ratified the UPCA in 2014 and the matter is currently being considered in the Bundestag and the Bundesrat. When the UK leaves the EU, Italy will take the UK’s place. However, until the UK has actually ceased to be a member of the EU, the introduction of the new system is stuck unless the UK ratifies and makes it possible for the Unitary Patent to come into effect, which seems to be what is happening now. The question is: what would the consequences be of a ratification by a participating country that will cease to be a Member State?

Only EU Member States can be part of the UP system, and therefore the UK will no longer be eligible to take part. Once the UK has left the EU, its territory will not be covered by the UP system and the Unified Patent Court will not have jurisdiction over it. Patentees wishing to obtain protection in the UK will have to file a patent application through the European Patent Office separately. With regard to enforcement, the UK territory will not be covered by the Europe-wide injunctions provided for under the UP system. Patentees holding a UP will still need to enforce their patents in the UK and national proceedings will therefore be needed in addition to proceedings before the UPC in to enforce or revoke a patent across Europe. In addition, practical arrangements for setting renewal fees might have to be revised if the validation of a patent in the UK is no longer possible under the UP system. Any attempt to ensure, for example, that renewal fees remain the same for patentees wishing to be protected in the EU and in the UK will depend on the good will of the UK. The UK is

2 Fifth progress report drawn up by the Chairs of the Select Committee of the Administrative Council of the European Patent Organisation (EPO) and of the Preparatory Committee, September 2016.
3 The Italian Senate adopted the draft legislation that will enable Italy to ratify the UPC Agreement on 18 October 2016.
4 France ratified on 14 March 2014.
considered as an integral part of European patent protection and most patentees might continue to see it as such, irrespective of the departure of the UK. The UP system might therefore be seen as less attractive without the UK’s participation insofar as the UK is an important country when it comes to patent protection. The UK will continue, in any event, to be part of the existing system of European Patents as the EPO is an international and not an EU system.

UPCA identifies London as one of the three locations of the Central Court. The UPCA specifies that the Court of First Instance’s Central Division will have its seat in Paris with sections in Munich and in London, the latter dealing with “Human necessities” and “Chemistry, metallurgy”. When Brexit becomes reality, the participating Member States will have to amend the UPCA and specify another location than London. The renegotiation of the seats of the central division seats of the UPCA is likely to further delay the start of UPC activities and the change of location will imply costs (the court premises in London are being prepared) and burdens. It would seem to be out of the question both legally (given the stance of the Court of Justice) and politically for London to remain a seat of the Central Division. It would also be absurd because the court would have no jurisdiction over patents in the UK and UK nationals would no longer be eligible to sit as judges in the UPC. The only long-term solution would be to renegotiate the whole Unitary Patent system as an international agreement, but this seems extremely unlikely.

Second part: provisions to be included in the “Exit agreement”

When the UK actually leaves the EU, the unitary patent would not have effect in the UK, unless the necessary modifications are made in the legal instruments of the “unitary patent package”.

It is to be expected that the UK will ask for the Unitary Patent Package to be included in the “Exit agreement” negotiations.

If the UK ratifies the UPCA before leaving the EU, this will mean that the UK will have to commit to upholding the primacy of EU law; which seems quite contradictory to the outcome of the referendum on Brexit. On the other hand, depending on how much time it will actually take for the UK to leave the UK, inaction until this date (assuming that Italy ratifies before it happens) might lead to a lack of interest in the UP and the death of the project.

Instead of ratifying, another option for the UK to allow the Unitary Patent to take effect in the rest of the EU could be to denounce the UPCA as soon as possible. Given Italy’s strong interest in taking the divisional court from London, it is probable that the Unitary Patent would then go ahead.

The remaining options would be to propose amending the UPCA. This could be considered in order to open the system to non-EU Member States and/or provide for an extension of the effect of the UP to the UK. This is maybe what the UK has in mind, as the UK Minister of State for Intellectual Property, Baroness Neville-Rolfe, said that the UK “will seek the best deal possible as we negotiate a new agreement with the European Union.”

However, the legality of this option would have to be confirmed by the Court of Justice. It is noted that the European Commission’s interpretation of the CJEU Opinion 1/09 is that only EU Member States can participate in sharing patent jurisdiction.

Specific amendments to the UPCA could have been introduced in order to make the UP system happen without the need for ratification by the UK. Any change would imply re-ratification of the amended Agreement.

Third part: content of the future EU-UK relations agreement
POLICY AREA: STATUTE FOR MEMBERS

Short introduction

In the event of a ‘hard Brexit’ – i.e. should a EU-UK withdrawal agreement not be reached within the deadline referred to in Article 50(3) TEU – British Members of the European Parliament would ipso facto no longer be entitled to seat in Parliament and enjoy the rights attached to the status of Member of the European Parliament. This scenario, which could have a severe impact on the political structure and the functioning of the European Parliament, should be avoided by means of an appropriate negotiated solution.

First part: Impact on any pending or imminent procedure

There is no pending or imminent procedure in this policy area.

Second part: provisions to be included in the “Exit agreement”

A ‘hard Brexit’ would amount to much more than a withdrawal of the mandate under Article 13 of the Act of 1976. Article 14(2) TEU lays down that the European Parliament “shall be composed of representatives of the Union’s citizens” and Article 20(1) TFEU clarifies that “[e]very person holding the nationality of a Member State shall be a citizen of the Union”. Since the UK would no longer be a Member State, its citizens would cease to be citizens of the Union and, as a result, they would no longer be entitled to have representatives sitting in the European Parliament. Most importantly, the European Council decision establishing the composition of the European Parliament referred to in the second subparagraph of Article 14(2) TEU would cease to be applicable, for one of its conditions of applicability is that seats in the European Parliament are allocated among Member States only.

Against that background, the post-Brexit status of British Members of the European Parliament would be that of former Members within the meaning of the Statute for Members. Indeed, among other things, the Statute for Members governs the consequences of the end of a Member’s term of office without any distinction as to how his or her term of office ends. It follows that former British Members – exactly like all other former Members – would be entitled to a transitional allowance and a pension (Articles 9(2), 13 and 14 of the Statute), and their surviving dependants would be entitled to a survivor’s pension (Articles 9(4) and 17 of the Statute). These Members and their surviving dependants would also be entitled to the reimbursement of two thirds of their medical expenses (Article 18 of the Statute).

5 Act of 20 September 1976 concerning the election of the members of the European Parliament by direct universal suffrage (OJ L 278, 8.10.1976, p. 5). Article 13(1) thereof reads as follows: “A seat shall fall vacant when the mandate of a member of the European Parliament ends as a result of resignation, death or withdrawal of the mandate”.


Paradoxically, pecuniary entitlements of former British Members would have to be funded from the general budget of the EU, to which the UK would no longer contribute, unless it were agreed that the UK should either continue to pay into the EU budget or pay a lump sum by way of compensation.

As already said, the above conclusions are valid for the case of a 'hard Brexit'. The withdrawal agreement will necessarily have to address those issues in order to settle them in a more negotiated and less abrupt manner.

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Third part: content of the future EU-UK relations agreement

The future EU-UK relations agreement could confirm and, where appropriate, update the arrangements made in the "exit agreement".

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Fourth part: any other relevant element

N/A
Short introduction
The European Parliament, the Council and the Commission alone have more than 1,500 British staff members. The UK withdrawing from the European Union will definitely have an impact on their careers for, in principle, only nationals of a Member State can work for the EU Institutions.

First part (impact on any pending or imminent procedure)
There is no pending or imminent procedure in this policy area.

Second part (provisions to be included in the “Exit agreement”)
Rather than requiring changes to the provisions of the Staff Regulations or of the Annexes thereto, the withdrawal of the UK will have an impact on the status of British staff members. This is very likely to feature as part of the EU-UK withdrawal agreement for the reasons set out below.

Under point (a) of Article 28 of the Staff Regulations, an official of the Union may be appointed only on condition that “he is a national of one of the Member States of the Union, unless an exception is authorised by the appointing authority, and enjoys his full rights as a citizen”. This condition must be met not only at the time when the official is recruited, but throughout his career. In establishing the procedure for compulsory resignation, Article 49, first paragraph, of the Staff Regulations provides that “[a]n official may be required to resign (...) where he ceases to fulfil the conditions laid down in Article 28 (a)”, i.e. to be a national of a Member State.

Manifestly, these provisions cover the case where an official loses the nationality of the Member State of which he used to be a national, but they could also be invoked in the case of British nationals working for the EU when the UK finally leaves the UK. In both cases, the requirement under Article 28 (a) would no longer be met. As a result, when the UK ceases to be a Member State of the Union, officials who are British nationals will cease to fulfil the conditions laid down in Article 28 (a) and could be subject to the compulsory resignation procedure under Article 49.

However, the Staff Regulations allow for some flexibility. On the one hand, Article 28(a) enables the appointing authority to authorise an exception to the nationality requirement. It is prima facie true that this possibility definitely exists at the moment of recruitment. Not only is Article 28 to be found in Chapter I on recruitment, but it also should be read in conjunction with Article 1(1), second subparagraph, point (i) of Annex III to the Staff Regulations, under which any exceptions pursuant to Article 28 (a) of the Staff Regulations must be stated in the notice of a competition, i.e. prior to the taking up of the official’s duty. However, nothing in the Staff Regulations seems to prevent the

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appointing authority from authorising such an exception, should an official lose the nationality of a Member State after his recruitment\(^5\).

On the other hand, resignation under Article 49 is not subject to an automatic mechanism: the official ‘may be required’ and not ‘shall be required’ to resign. Moreover, reasoned decisions requiring officials to resign have to be taken by the appointing authority after consulting the Joint Committee referred to in Article 9 of the Staff Regulations and after hearing the official concerned.

The “exit agreement” should address the matter and clarify whether the exception to the nationality requirement referred to in Article 28(a) may apply to all British nationals working for the EU Institutions at the time of the entry into force of the “exit agreement”.

Regardless of whether a general exception is authorised, there is also the question of acquired rights, which should also be dealt with in the “exit agreement”.

The nationality requirement only applies to officials in active employment\(^9\), and not to those who are retired. It follows that retired officials who cease to fulfil that requirement after they retire would not lose their right to a retirement pension. Article 41, second paragraph, of Annex VIII to the Staff Regulations—pursuant to which “[t]hey shall be liable to modification or withdrawal if the award [of a retirement pension] was contrary to the provisions of the Staff Regulations or of this Annex”—would not apply to (already) retired British officials since they did fulfil the nationality requirement at the moment of their retirement.

However, special arrangements for British staff members who have retired in one of the Member States—notably that in which they used to work—will have to be made. This specific case would also be linked with the general situation of British nationals who have settled in a different Member State and should be covered in the “exit agreement” (or, at the latest, in future EU-UK relations agreement).

The withdrawal of the UK can have far-reaching implications for the application of the Staff Regulations. For instance, Article 13(2)(a) of Annex VII to the Staff Regulations, which governs the reimbursement of mission expenses incurred by a staff member on mission in a Member State, establishes a scale with different hotel ceilings and daily allowances per Member State. This scale currently applies to the staff of all the EU Institutions. However, when the UK is no longer a EU Member State, missions to the UK, if any, will have to be regarded as missions outside the EU and they will thus have to be subject to the different provision of Article 13(2)(b), which reads as follows: “[t]he scale for missions in countries outside the European territory of the Member States shall be fixed and adjusted periodically by the Appointing Authority”. This means that, contrary to the missions within the EU, missions to the UK will be reimbursed according to criteria which can vary from Institution to Institution.

Another example is the annual adjustment of officials’ remuneration and pensions referred to in Articles 65(1) and 82(2) of the Staff Regulations and in Annex XI thereto. Among other indicators, this adjustment is based on the changes in the purchasing power of salaries of national civil servants in a sample composed of specific Member States, including the UK (see, in particular, the fourth subparagraph of Article 1(4)(a) of Annex XI). In the event of its withdrawal, the UK will no longer be included in the reference sample. This would amount to a surreptitious change in the factors

\(^5\) This was precisely the case of a small number of Norwegian officials who had been recruited by the Commission in the early 1990s before the negative outcome of the referendum held on 27 and 28 November 1994 on whether Norway should join the EU.

\(^9\) Or any other administrative status referred to in Article 35 of the Staff Regulations.
determining the annual adjustments, which might have important implications for the amounts actually granted. Unless a solution is found in the "exit agreement" (e.g. an amendment to the Staff Regulations), this would also amount to circumventing the specific procedure established in order to replace the existing sample (see, again, the fourth subparagraph of Article 1(4)(a) of Annex XI).

All the above-mentioned cases have important budgetary implications. On the (reasonable) assumption that the salaries and pensions of British officials, other servants and pensioners will continue to be paid out of the EU budget, the UK ought to either continue to pay into the EU budget or pay a lump sum by way of compensation. Given that the total staff numbers of the EU institutions reflect the fact that the EU consists at present of 28 Member States, one of which (the UK) has a population of 65 million, it is submitted that the UK should not merely compensate the EU for past and present UK nationals on the staff, but for a percentage (at least) of all staff (according to Politico, even though the U.K. population makes up 12.7 percent of the EU total, British officials hold less than 5 per cent of the jobs in the EU institutions). The 290 UK staff in the Parliament’s administration (a figure that does not include British MEPs and their assistants, whose jobs will disappear as a result of Brexit) make up just 3.8 per cent of Parliament’s 7,606 officials. The Council has 86 British staff members, including temporary agents, just 2.6 percent of the institution’s total. There are 1,126 UK officials, including temporary agents, in the Commission — 3.8 percent of the total. However, all this is a matter for the Article 50 negotiations and does not necessarily imply any legislative changes.

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**Third part (content of the future EU-UK relations agreement)**

The future EU-UK relations agreement could confirm and, where appropriate, update the arrangements made in the "exit agreement".

Concerning EU staff who have retired in the United Kingdom, the negotiators may seek to agree a double taxation agreement with the UK in order to avoid pensioners paying tax twice, once to the EU and once to the UK. In the alternative, a change could be made to the Staff Regulations.

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**Fourth part (any other relevant element)**

Should the EU decide to have a representation in the UK, as it has in many third countries, British nationals could not be recruited locally. Pursuant to Article 1, second subparagraph, of Annex X, only nationals of Member States of the Union may be recruited to serve in a third country, "the appointing authority not being permitted to invoke the exception provided for in Article 28 (a) of the Staff Regulations".

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11 The present sample of 11 Member States amounts to 84.3% of the EU GDP. If the UK leaves the EU, the total GDP of the sample will drop to 81.7%, which will still be above 75%, as required by Annex XI. However, the resulting change in the sample would not be made under the procedure referred to in Article 1(4)(a) of Annex XI, which requires an act amending the Staff Regulations in accordance with Article 336 TFEU.