

After the Divorce

British families living in the EU-27 post-Brexit

By Aliyyah Ahad

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EXECUTIVE SUMMARY

When the United Kingdom voted to leave the European Union in June 2016, it left many British families fearful for their future as residents of the remaining EU Member States (EU-27). Their concerns have only increased as the United Kingdom's fated departure inches closer and the prospects for getting a Brexit bill approved by the UK parliament look increasingly uncertain.

Although families make up a large portion of EU residents exercising the right to free movement across all Member States, they have been historically more vulnerable when doing so. This is particularly the case for those who are out of work or caring for family members. Legal systems are not always designed to cater to the needs of families rather than individuals, and the patchwork of rights and benefits given to EU citizens and their family members from outside the European Union means that the movement of some is more restricted than others. If UK citizens suddenly become subject to stricter family migration requirements after Brexit, there is a risk that some of their family members—particularly third-country nationals, adult dependants, and same-sex or unregistered partners—will fall through the gaps of national legal frameworks. Moreover, existing vulnerabilities are likely to be exacerbated as Member States retain a large degree of discretion in designing post-Brexit residence application systems.

The December 2017 joint EU-UK report and February and March 2018 draft withdrawal agreements coloured in many details of what a final divorce deal could look like between the United Kingdom and the European Union, including its potential impact on citizens' rights. The latest November 2018 draft agreement leaves these portions essentially unchanged. But key issues remain unresolved, which could inadvertently prevent some British families from maintaining their livelihoods in the European Union. Questions surround the future secondary movement of seasonal workers and those on short-term contracts, visa-free travel to visit and care for loved ones, and individuals' ability to provide professional services and have qualifications recognised across borders. It is also unclear whether Britons who naturalise in their EU host country will be covered by a withdrawal agreement, which may have looser income and language proficiency requirements than national legislation.

Amid ideological divisions within the UK government over the future relationship between the United Kingdom and the European Union, which resulted in a series of high-profile resignations in July and November 2018, reaching an agreement with EU negotiators has not removed the possibility of a no-deal scenario. The progress made thus far to ensure British families' future status and rights in the EU-27 (and EU-27 citizens')

status and rights in the United Kingdom) could quickly unravel unless the final agreement is ratified by both UK and EU parliaments by 29 March 2019. In the event of a no-deal Brexit, Member States would have very little time to negotiate bilateral agreements with the United Kingdom or pass domestic laws to preserve British residents' rights. That could leave some British family members without legal status and unable to maintain themselves in a host Member State.

Some British families will be able to stay in the European Union regardless, thanks to the rights conferred by marriage/partnership, citizenship, or permanent residence. And many have strong roots in their countries of residence. For example, according to Germany's Federal Statistical Office (Destatis), in 2017, 33 per cent of British immigrants in Germany had lived there for more than 25 years. But if depreciating savings in pounds sterling or difficulties uniting with family members, accessing social and family care networks, or maintaining free-movement-based livelihoods force British families to return to the United Kingdom, these long-term residents may face seismic disruptions to their lives and need considerable support upon their return—eventualities both EU-27 and UK policymakers should begin to plan for now, in the final months before Brexit.

I. INTRODUCTION

The November 2018 draft withdrawal agreement¹ that, if ratified by the EU and UK parliaments, would eventually govern the terms of the United Kingdom's departure from the European Union confirmed the terms set in the March 2018 draft on protecting citizens' rights. Yet the divorce deal leaves several key issues unresolved, with implications for the rights and abilities of European families in the United Kingdom and British families² in the remaining EU Member States (EU-27) to maintain themselves after Brexit. This policy brief looks at the potential impact of Brexit on British families in the EU-27, a group that is much less discussed and studied than their counterparts in the United Kingdom.³

Although families make up a large portion of EU migrants,⁴ they have been historically more vulnerable when exercising their free movement rights. This is especially the case for those who are out of work, on short-

term contracts, or caring for family members. For families who already encounter difficulties exercising their rights under the EU Free Movement Directive, including those with third-country-national members, those who are economically inactive, and same-sex partners, the draft withdrawal agreement offers no additional protections.

After Brexit, even more British families in the EU-27 could find themselves vulnerable. Without agreements on the thorny issues of secondary movement, the provision of cross-border services, and recognition of professional qualifications, many families' livelihoods are at stake. A new set of challenges also faces dual nationals. Thousands of Britons and their family members have tried to secure their residency in the European Union by naturalising in their host Member State. But restrictions on dual nationality in some Member States (including some with large UK-citizen populations, such as Spain, Germany, and the Netherlands) leave British residents of these countries with a difficult choice. It is also unclear whether UK citizens who hold dual citizenship are covered by the withdrawal agreement, which has more generous provisions for family reunification than some Member States' national legislation.⁵

Despite the agreement reached by EU and UK negotiators in November 2018, the threat of a no-deal scenario still looms large. Political upheaval within the UK government—including the July and November 2018 resignations of the Ministers for the Department for Exiting the European Union⁶—has raised the prospect of a vote of no confidence in the British prime minister, and a possible return to square one in the negotiations. If the withdrawal agreement is rejected by the UK parliament, Britons could become third-country nationals with a thud. In such a cliff-edge scenario, the remaining EU Member States would be left too little time to broker bilateral agreements with the United Kingdom on citizens' rights, and British families' current rights to residency, family reunification, employment, study, and access to pensions and health care could disappear overnight. And even if the negotiated withdrawal agreement comes into effect, there is significant risk that, without deliberate planning, consideration, and support, many British families could fall through the gaps of various national frameworks. While the United Kingdom published details and has begun pilot schemes on how it plans to manage the change in status of its resident EU-27 nationals,⁷ UK citizens living in the EU-27 are largely in the dark on what new systems (if any) might soon govern their lives, and how to prepare for them.

II. FAMILIES AND EU FREE MOVEMENT RIGHTS

Exactly how laws define family members and dependants has important ramifications for what types of family migration are allowed, and under what conditions. Currently, Britons living in another EU Member State have certain rights to family life that are protected by the EU Free Movement Directive.⁸ These rights extend to their third-country-national family members, who might otherwise be subject to stricter national immigration and family reunification laws. Under the Free Movement Directive, these family members are treated essentially as EU nationals, able to enter a host Member State without a visa, and to access employment and social security rights to the same degree as EU citizens. However, in practice, differences in how Member States transpose and implement the directive leave some family members less able to exercise these rights than others.

Who is considered a family member for the purposes of immigration varies across Europe. As a result, some family members (such as partners in same-sex or long-distance relationships) have a tough time moving to live in the same country. Under the Free Movement Directive, a ‘family member’ can be a spouse or partner, or a dependent child, grandchild, parent, or grandparent (including those of the spouse or partner).⁹ The directive offers fewer guarantees for the movement of other family members, such as unregistered partners in what it refers to as a ‘durable’ relationship or other dependants, including those with serious medical needs.

While primary family members have mobility rights akin to those of EU nationals, other family members do not. Member States are only required to ‘facilitate’ their entry and residence through national legislation—a significantly higher level of discretion in deciding who is admitted.¹⁰ For example, in some Member States, including Italy, Poland, and Germany, the definition of a dependant is unclear, as is the documentation required to prove dependency.¹¹ Moreover, family law and the definition of marriage and civil partnership are set by individual Member States, which can create additional hurdles for partners in same-sex and unregistered relationships moving between Member States or from abroad.

British nationals living in the EU-27 have a kaleidoscope of family arrangements and compositions. Determinations about who should be considered family under the withdrawal agreement may expose already vulnerable families

to greater uncertainties—such as whether they will face burdensome documentary requirements and difficulties proving their rights. For members of some families, this may mean suddenly being unable to exercise their own free movement rights and, instead, being reliant on the rights and status of the principal British migrant who moved to a host Member State before Brexit.

III. KEY ISSUES FACING BRITISH FAMILIES IN THE EU-27

While the November 2018 draft withdrawal agreement protects most existing rights to family migration, it does not address existing imbalances in entry and residence that already disproportionately disadvantage families that include third-country nationals, same-sex or unregistered partners, or adult dependants. Moreover, the agreement does not resolve several key issues that will affect British families’ ability to remain in the EU-27 after Brexit. These include the right to secondary movement for seasonal workers, visa-free travel for those visiting or providing care to loved ones, and the ability to provide professional services and have qualifications recognised across borders. Additionally, the withdrawal agreement does not clarify how dual nationals will be treated, nor does it include provisions on the rights of UK nationals returning to the United Kingdom. Finally, while the February 2018 version of the draft withdrawal agreement covered partners and spouses in relationships formed after the transition period ends on 31 December 2020, more recent drafts, released in March and November 2018, appear to backtrack, leaving them subject to national family reunification procedures.¹²

A. *Family reunification and residence rights*

One of the key tasks for the EU and UK negotiators was to delineate which family members’ rights to family reunification would be protected by the withdrawal agreement and who will be subject to national legislation. The final draft agreement protects a broad group of family members, including those who are already resident in a host EU Member State, as well as those who live elsewhere, provided they may be categorised as ‘primary’ family

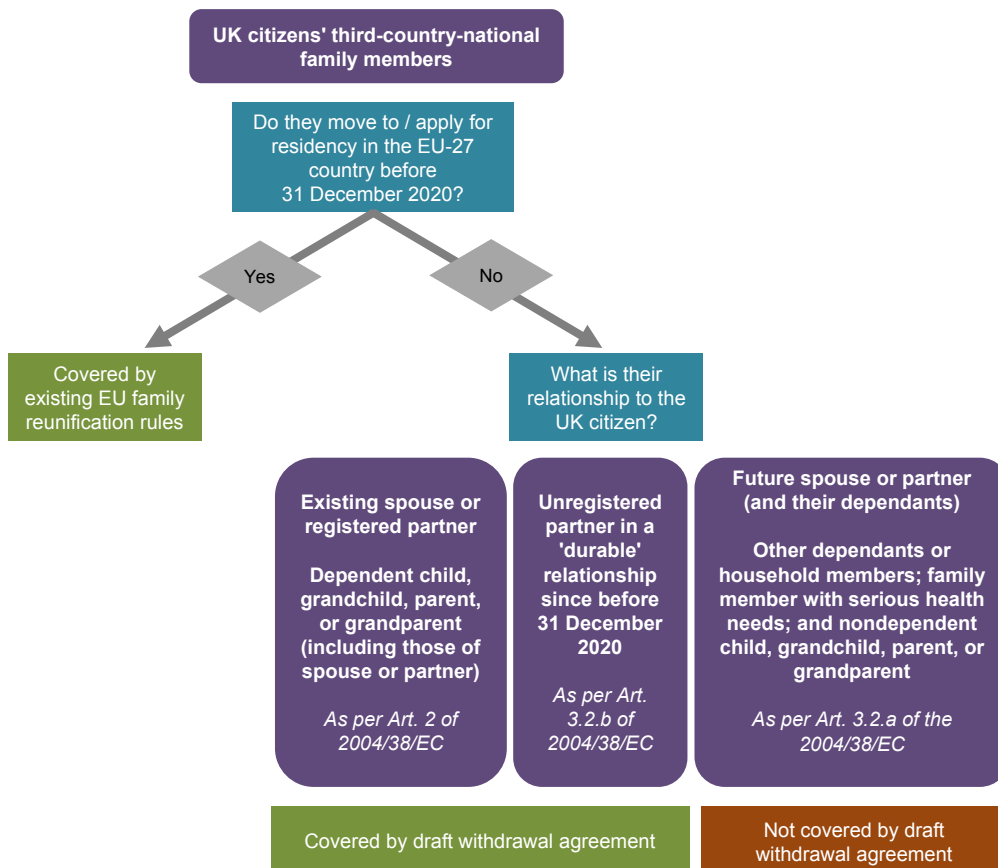
members—that is, a spouse or partner, dependent child or grandchild, or dependent parent or grandparent (see Figure 1).

Many family members are left out of the final draft withdrawal agreement. Future partners and spouses were explicitly included in the February draft of the withdrawal text but then dropped in the March and November versions. This gives Britons living in the EU-27 who have not yet started families—including the approximately 84,000 British children under the age of 15¹³—fewer guarantees to family life. Extended family members, such as adult siblings, and nondependent parents and children are also not covered by the draft withdrawal agreement, unless they

are already living in a host Member State by the date the final agreement goes into effect. These extended and future family members will instead be subject to the often less generous regulations individual Member States set for family reunification.

There are three categories of families that may be particularly vulnerable under this post-Brexit legal framework: families with some third-country-national members, those that centre on same-sex partnerships, and hyper-mobile families. The remainder of this section will examine the obstacles facing these groups and how these may grow after Brexit.

Figure 1. Post-Brexit family reunification rights of UK nationals in the EU-27, as outlined by the November 2018 draft withdrawal agreement



Sources: European Commission, *Joint Report from the Negotiators of the European Union and the United Kingdom on Progress during Phase 1 of Negotiations under Article 50 TEU on the United Kingdom's Orderly Withdrawal from the European Union* (Brussels: European Commission, 2017), https://ec.europa.eu/commission/publications/joint-report-negotiators-european-union-and-united-kingdom-government-progress-during-phase-1-negotiations-under-article-50-teu-united-kingdoms-orderly-withdrawal-european-union_en; European Commission, *Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community Highlighting the Progress Made (Coloured Version) in the Negotiation Round with the UK of 16–19 March 2018* (Brussels: European Commission, 2018), https://ec.europa.eu/commission/sites/beta-political/files/draft_agreement_coloured.pdf; European Commission, *Draft Agreement on the Withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community* (Brussels: European Commission, 2018), https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf.

1. Mixed-status families

Despite formally having the same rights, in practice third-country-national family members of EU citizens already experience difficulties exercising their rights to entry and residence—difficulties that could be exacerbated by Brexit. Obstacles include demands for excessive documentation, delays in the issuance of visas or residence cards, visa fees, and unjustified refusals.¹⁴ The final draft withdrawal agreement offers the general guideline that the post-Brexit processes Member States create to adjust or grant status to UK-citizen residents and their family members should be ‘transparent, smooth, and streamlined’; however, EU-27 countries have a great deal of discretion. Whatever processes states design, they run the risk of inheriting existing challenges. This risk is amplified by the fact that Member States only have a short window of time to prepare to implement the divorce deal; assuming the final deal is approved, the transition period would be 29 March 2019 to 31 December 2020.¹⁵

Onerous processes and improper implementation of a post-Brexit status for third-country nationals could severely disadvantage their British family members. For example, if the third-country-national parent of a child with UK citizenship has difficulty getting residency, the family may be forced to pull that child out of school and leave the host Member State even if the child has the right to stay and complete their education. Furthermore, it is unclear whether the status of third-country nationals who care for a child who was born with or who has adopted the citizenship of the host Member State (and who, therefore, is not exercising free movement) will be covered by the withdrawal agreement.¹⁶

At the same time, the third-country-national family members of UK citizens may have greater difficulties entering the United Kingdom. While the final draft withdrawal agreement details what rights UK nationals will have to family reunification in their host Member State, it is mute on their options should they return to the United Kingdom. UK citizens who exercise free movement either as workers or self-employed persons are currently entitled to return home with their third-country-national family members without being subject to the strict income requirements applied to Britons who have not moved within the European Union and seek family reunification (so-called *Surinder Singh* cases).¹⁷

2. Same-sex couples

Some Britons in same-sex relationships already experience difficulties having their spouse or partner recognised as family for the purposes of family reunification and residency. The final draft withdrawal agreement does not address these issues. While same-sex marriages are allowed in 13 Member States, six EU countries do not even allow registered or civil partnerships for same-sex couples. Like the Free Movement Directive, the draft agreement protects family migration for those who have been in a ‘durable’ relationship since before Brexit. This stipulation is often applied to same-sex couples where formal unions are not recognised and to opposite-sex couples in unregistered partnerships. However, in both cases, the decision about what documentation applicants must provide to prove their relationship is ‘durable’ is up to the Member States, and some set a very high bar.

In some Member States, partners may be required to show that they have been living together (France and Sweden¹⁸) or that they have met a certain number of times in the last two years (Belgium¹⁹), both of which can disadvantage long-distance couples. Germany²⁰ and Poland,²¹ on the other hand, do not have national legislation allowing families to migrate on the basis of a durable relationship. However, there is one bright spot. The European Court of Justice ruled on 5 June 2018 that all Member States must recognise same-sex spouses for the purposes of exercising free movement,²² even where same-sex marriages are not recognised in national legislation. But challenges may persist for same-sex couples in registered partnerships as opposed to marriages. Moreover, there may be a lag as national systems adapt to the ruling.

In the case that the divorce deal is not approved by the EU or UK parliaments, once UK citizens become third-country nationals, they could be subject to national family reunification rules for other immigrants with that status, a scenario that could be more limiting for same-sex partners. For example, while the EU Family Reunification Directive allows third-country nationals’ spouses to join them, there is no explicit obligation to apply this right to the same-sex partners of resident third-country nationals.²³ Most Member States allow these couples to apply for family reunification, but Estonia, Lithuania, Latvia, Malta, Poland, and Slovakia do not.²⁴ Indeed, third-country nationals in same-sex relationships only have identical rights to family reunification as opposite-sex couples in 11 Member States.²⁵

3. Hyper-mobile families

Under the Free Movement Directive, EU citizens can reside in a Member State for up to three months without any conditions or formalities, besides holding a valid identity card or passport. British families would not retain this right under the withdrawal agreement. Instead, they could be subject to stricter and more expensive visa rules or family reunification laws. This could increase the isolation of some vulnerable family members, such as elderly and ill parents who rely on extended family to provide care on a short-term or temporary basis, especially where social-care systems are difficult to navigate or offer only limited in-home services.

Estimating the number of Britons whose livelihoods and lifestyles rely on free movement is difficult. Because EU citizens are not required to register in a host country for stays of less than three months, they can maintain tax residency and health coverage in their home country, leaving little evidence of their multiple domiciles.²⁶ Large-scale data collection systems, such as censuses, primarily record settled resident populations within a particular nation state. However, highly mobile families, including those that live and work in multiple countries over the course of a year, would be invisible in data sources that only capture people who spend a year or more in one place. For example, Statistics Sweden collects data on circular migration for immigrants who spend a year or more in Sweden. Of the 15,827 UK-born immigrants who arrived in Sweden between 2006 and 2015, more than one-quarter engaged in circular migration between Sweden and another country within that time period—that is, they immigrated to Sweden, resided there for at least 12 months, moved abroad for at least 12 months, and then returned to Sweden.²⁷ Yet these data do not capture the movement of migrants who resided in Sweden or elsewhere for fewer than 12 months, such as for seasonal work.

Without information on immigrants' previous countries of residence and length of stay in those countries, available data may mask the complexity of how some British nationals and their families exercise free movement rights, and what they stand to lose. Case studies collected by the advocacy group British in Europe include numerous examples of Britons who live and work in multiple EU-27 countries.²⁸ For example, a couple with seasonal businesses operates these in different EU countries at different times of year. Without continued freedom of movement, their livelihood would be endangered. Under the November 2018 final draft withdrawal agreement, this couple would not meet the residency requirements of either of the Member States in which they work, nor would they qualify as frontier workers (i.e., those who work in one Member State

but live in another and return to their country of residence daily or at least once per week). Relatedly, the agreement does not cover people who travel to provide cross-border services (e.g., entrepreneurs or consultants providing temporary services in one Member State while being based in another), potentially imperilling the livelihoods of families dependent on this trade.

B. To naturalise or not to naturalise

Some of the approximately 890,000 UK nationals living in the EU-27²⁹ may feel forced to naturalise in their host Member State to guarantee their (and their family members') rights to onward movement, provision of cross-border services, recognition of qualifications, and other rights excluded from the final draft withdrawal agreement. In certain Member States, such as Spain and the Netherlands, most naturalised citizens are forced to relinquish their other citizenship, which for these Britons could potentially make it difficult to return to the United Kingdom. However, without an EU citizenship, families that move to another EU Member State after Brexit risk being subject to strict national family reunification legislation.³⁰

A significant challenge to the rights of EU citizens and their families was resolved by the European Court of Justice in November 2017.³¹ The core issue was whether EU nationals who exercise their free movement rights and subsequently acquire dual nationality in their host Member State are subject to stricter national family reunification rules or whether they are still protected by the Free Movement Directive. The court ruled that the Algerian spouse of a Spanish woman who had naturalised as a UK citizen had a 'derived right' under the directive to join her in the United Kingdom—even if, as a citizen, she was no longer exercising her free movement rights.³²

In effect, this ruling created a distinction between EU citizens who naturalise to gain another EU citizenship after exercising free movement and those who naturalise without doing so. This has important implications for British migrants in the EU-27 eager for the secure legal status that naturalisation affords. It suggests that if they become dual EU nationals (at least before Brexit), they and their families will still be entitled to free movement rights. It is unclear whether the same holds true for persons who naturalise and, in the process, must revoke their previous EU citizenship. In Germany, this requirement does not apply to dual EU nationals—an estimated 26,000 residents of the country had dual German-UK citizenship as of 2016³³—but it is unclear whether Brexit will affect this exemption. In the Netherlands, dual citizenship is allowed only under certain circumstances; in October 2017, the Dutch govern-

ment agreed to give its citizens living in the United Kingdom the right to become dual nationals after Brexit, but the same exception has not been made for British residents of the Netherlands.³⁴ For many British families in countries with these types of restrictions, it remains unclear whether naturalisation will lead to more secure or more limited post-Brexit free movement rights.

C. Gaps in the rights of children

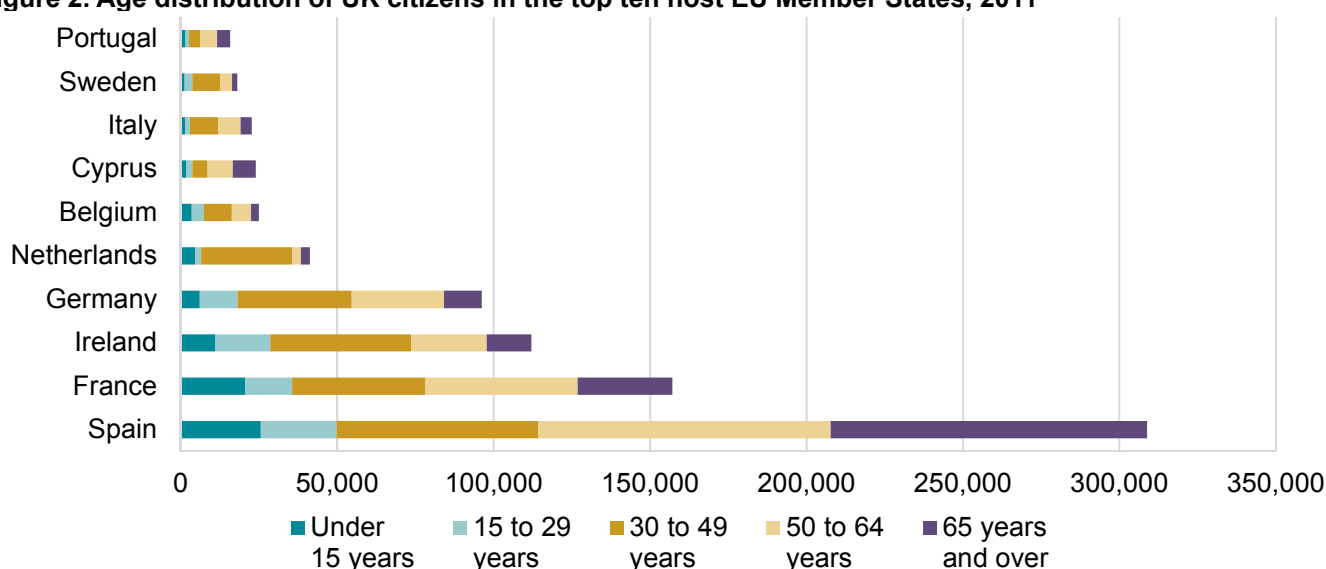
British children face many of the same challenges as the rest of their families, but they could be particularly disadvantaged by post-Brexit registration systems, changes in custody and visiting rights, greater difficulties in pursuing studies in the European Union, and, as they get older, restrictions on their rights to reunify with future spouses and partners. The majority of children will likely be reliant on their parents—financially and administratively—when applying for a post-Brexit status. Yet there is a risk that parents may wrongly assume that their child will not need to register for a new residence status after Brexit, particularly in cases where the child is a UK citizen and the parents are third-country nationals or EU-27 citizens, or where the child was born in the host Member State (in which case, the parents may assume that the child is automatically entitled to host-country citizenship).³⁵ Parents who do not

speak the host-country language may also misinterpret key registration information if it is not provided in English.

To ensure that all British children retain their rights after Brexit, Member States may consider targeting outreach towards families with children, particularly in Spain and France—where 57 per cent of British children in the EU-27 live—and in countries where children make up a large proportion of the British resident population, as in Lithuania (37 per cent), Slovakia (36 per cent), Luxembourg (19 per cent), and Romania (18 per cent) (see Figure 2).³⁶

Children with separated families may encounter difficulties after Brexit. Currently, court decisions on parental responsibility and maintenance in the European Union are automatically recognised in all EU countries (except Denmark) and are enforced by a standard procedure.³⁷ After Brexit, custody, visitation, and maintenance arrangements agreed in the United Kingdom might require additional procedures to be recognised in the European Union—and vice versa. Moreover, if one parent lives in the United Kingdom and the other lives in an EU Member State, EU regulations might no longer apply.³⁸ This could force some parents to engage in costly legal battles over parental responsibility.³⁹ It could also leave children vulnerable to prolonged economic hardship if it becomes more difficult for the courts in Member States to recognise judgements on maintenance made in the United Kingdom.

Figure 2. Age distribution of UK citizens in the top ten host EU Member States, 2011



Note: These data come from Eurostat and CBS Statline (Netherlands) and were compiled by the UK Office for National Statistics (ONS).

Sources: ONS, 'What Information Is There on British Migrants Living in Europe?: Jan 2017', Table 1, updated 27 January 2017, www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/whatinformationisthereonbritishmigrantslivingineurope/jan2017#number-of-british-citizens-living-in-europe-in-2011-by-age.

Young Britons may also face restrictions on study in the EU-27. Although the cost of university tuition varies significantly across the European Union, the rate for EU nationals is typically less than that for third-country nationals. Moreover, some forms of financial assistance are restricted based on nationality and/or residency.⁴⁰ The final withdrawal agreement does not preserve home fee entitlements in the European Union for UK nationals who apply to study outside their Member State of residence. Parents and students may be unprepared to pay higher fees, reducing their options for higher education or delaying enrolment. Similarly, the United Kingdom has an uncertain future in Erasmus+, the European scheme that supports EU citizens to study, teach, volunteer, work, and train in another Member State. Between 2014 and 2016, 30,490 UK students participated in Erasmus+ higher-education programmes.⁴¹ Once the current funding cycle ends in 2020, UK citizens may lose eligibility and incur higher costs to study abroad.⁴²

Cutting family migration from future spouses and partners out of the Brexit deal, as was done between the February and March drafts, disproportionately disadvantages younger Britons. As British children living in the EU-27 eventually grow up and form relationships, their rights to family reunification will be based not on the withdrawal agreement, but on often more strict national laws for third-country nationals unless a separate framework on EU-UK immigration is negotiated.⁴³ The final draft agreement's provisions for Britons and their current partners or spouses will apply for their entire lifetime, as long as they meet its conditions.⁴⁴ But young Britons will have far fewer family rights under its provisions, which may encourage them to return to the United Kingdom or naturalise in their host state in order to secure more rights.

Ultimately the November 2018 final draft withdrawal agreement confirms the progress made in March 2018 on clarifying many of the future rights UK citizens may have in the European Union. Yet it does not address all the challenges that British families in Europe might face. Significant gaps remain and there are no guarantees that the final deal will be approved.

IV. WHAT HAPPENS IF THERE IS NO DEAL?

After months of all but stalled negotiations, the EU and UK negotiators published the final draft withdrawal agreement in November 2018. Yet persistent divisions within

the governing UK Conservative Party on what direction the divorce should take have escalated concerns that it could be voted down in parliament. If the deal is not ratified by 29 March 2019, UK citizens living in the EU-27 would no longer benefit from existing social security, social assistance, tax, and health-care schemes. They would also lose their favourable access to employment, self-employment, and education and training. For British families there is even more at stake. The Family Reunification Directive is far less generous on family migration involving third-country nationals than the final draft withdrawal agreement.

A. *Becoming third-country nationals*

If the Brexit deal falls through, British families would be subject to national immigration and family reunification laws overnight. Stricter family migration requirements could have a host of negative consequences for these families. For example, income thresholds for family reunification may penalise UK nationals with a relatively low net worth, such as students and partners in young families. Yet these low-income families may be most in need of family reunification in order to, for example, split accommodation costs between partners or help with child care, particularly for those engaged in shift work that does not align with normal school hours. Restrictions potentially create incentives to unite families irregularly, which could hinder access to education and health care for children and other family members where proof of residency is required. It may also limit families' access to labour markets and social services. Meanwhile, family separation has been linked to poorer mental health, behavioural issues, lower educational attainment, and higher incidences of poverty.⁴⁵ As described, some British families already face challenges exercising their free movement rights, such as those with a mix of legal statuses and same-sex couples. With even greater challenges, some Britons may be forced to choose between family life and continuing to live in the European Union.

The Family Reunification Directive applies to all Member States, except Denmark, Ireland, and the United Kingdom.⁴⁶ Yet within the confines of the directive, the family reunification requirements can differ widely between Member States. Each sets out various material requirements for sponsors, such as having suitable accommodation for the number of family members under consideration for admission, possessing health insurance, and having sufficient financial resources (typically equivalent to a subsistence-level monthly income, depending on family size) (see Table 1).⁴⁷ The rights of third-country-nation-

Table 1. Third-country nationals living in the European Union and seeking to sponsor family members: Eligibility requirements in the ten EU countries with the most British residents, 2018

EU Member State	Sponsor income requirement	Sponsor minimum length of stay requirement	Sponsor accommodation requirement	Family member prearrival language proficiency requirement
Belgium	Yes: 120 per cent of the social security minimum	No (except for family formation without children)	Yes	No
Cyprus	No: case-by-case evaluation	Yes: two years	Yes	No
France	Yes: basic monthly income / subsistence amount	Yes: 18 months	Yes	No
Germany	Yes: basic monthly income / subsistence amount (reduced where minor child involved)	Varies: two years for spouse of foreign student, employee, or self-employed person if married after sponsor received residence permit	Yes	Yes: A1-level German (except family of EU Blue Card holders, highly skilled workers, self-employed workers, humanitarian migrants, and some nationalities)
Ireland*	Yes: self-sufficiency without government benefits for two years	Varies: one year for immediate family, two years for other family members of work-permit holders from visa-required countries	No	No
Italy	Yes: varies depending on the family size	No	Yes (relaxed for children under 14)	No
Netherlands	Yes: basic monthly income / subsistence amount	Yes: one year (except if sponsor is a student, highly skilled, scientific researcher, or [self-]employed)	No	Yes: A1-level Dutch (family of labour migrants and students are exempt)
Portugal	Yes: 150 per cent of minimum wage for reunification with spouse, 30 per cent for each child	No	Yes	No
Spain	Yes: amount varies depending on family size	Yes: one year (except if sponsor holds an EU long-term residence permit, an EU Blue Card, or is a student, researcher, or beneficiary of the International Mobility scheme)	Yes (except if sponsor is a student, researcher, or beneficiary of the International Mobility scheme)	No
Sweden	Yes: amount varies depending on family size	No	Yes (except for reunification with minor children)	No

* Under the Common Travel Area (CTA) between the United Kingdom and Ireland, an agreement that predates and is independent of EU membership, UK citizens would retain their current rights to work, study, vote, and access social welfare benefits and health services in Ireland. Yet, both the UK and Irish governments have expressed uncertainty how Brexit will affect the future of the CTA. And even if the CTA is preserved entirely, it is unclear whether the agreement would offer any rights to UK citizens' third-country-national family members after Brexit. The CTA only explicitly refers to Irish and UK citizens, whereas the EU Free Movement Directive grants rights to EU citizens' third-country-national family members.

Sources: European Commission, 'EU Immigration Portal: Cyprus', updated 20 October 2018, https://ec.europa.eu/immigration/country-specific-information/cyprus/family-member_en; Intérieur Binnenlandse Zaken (IBZ), Office des Étrangers, 'Les Moyens de Subsistance Stables, Réguliers et Suffisants', updated 4 September 2018, https://dofi.ibz.be/sites/dvzoe/FR/Guidedesprocedures/Pages/Regroupement_familial/Les%20moyens%20de%20subsistance%20stables.%20%C3%A9guliers%20et%20suffisants.aspx; Organisation for Economic Cooperation and Development (OECD), *International Migration Outlook 2018* (Paris: OECD Publishing, 2018), www.oecd.org/migration/international-migration-outlook-1999124x.htm; European Commission, *EMN Synthesis Report for the EMN Focussed Study 2016: Family Reunification of Third-Country Nationals in the EU Plus Norway: National Practices* (Brussels: European Commission, 2017), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/00_family_reunification_synthesis_report_final_en_print_ready_0.pdf; Swedish Migration Agency, 'Family Reunification', updated 8 February 2018, www.migrationsverket.se/English/Private-individuals/Protection-and-asylum-in-Sweden/When-you-have-received-a-decision-on-your-asylum-application/If-you-are-allowed-to-stay/Family-reunification.html; Janne Grote, 'Family Reunification of Third-Country Nationals in Germany. Focussed Study by the German National Contact Point for the European Migration Network (EMN)' (working paper 73, Research Centre of the Federal Office for Migration and Refugees, Nuremberg, 2016), https://ec.europa.eu/home-affairs/sites/homeaffairs/files/11a_germany_family_reunification_en.pdf; Terry McGuinness and Melanie Gower, 'The Common Travel Area and the Special Status of Irish Nationals in UK Law' (briefing paper no. 7661, UK House of Commons Library, London, 9 June 2017), <https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7661>.

al family members also differ based on their relationship to the sponsor and the type of permit the sponsor holds. For example, family members of foreign students generally have to qualify for a separate permit to work, while the family members of skilled workers enjoy full access to the labour market.⁴⁸

Some countries require third-country nationals looking to join their families in the European Union to meet specific integration measures prior to arrival, and others are considering them. In Austria, Germany, and the Netherlands, family members must demonstrate basic language proficiency corresponding to the A1 level of the Common European Framework of Reference for Languages (CEFR), though there are some exceptions.⁴⁹ Where required, the language classes to obtain the needed level of proficiency are at the applicants' expense.⁵⁰ Austria and the Netherlands also require family members to advance their language proficiency after arrival (to level A2 or B1).⁵¹ These integration requirements will have an uneven impact on UK citizens based on their socioeconomic status. For example, integration requirements are often waived for highly skilled workers, which fits the profile of many British nationals working in countries such as the Netherlands and Germany.

B. Other routes to secure status

Even without a Brexit deal, a significant proportion of Britons will be eligible for secure status in a host Member State through permanent residency, citizenship, or marriage/partnership. At least in France and Germany (where public data are available), a sizeable portion of UK citizens in couples have a partner with the citizenship of the host Member State. For example, according to the German Federal Statistical Office (Destatis), there were 116,465 UK citizens living in Germany in 2017 (see Table 2). Of the 44,545 who were married, 31 per cent were married to a German citizen.⁵² Britons who have not yet acquired the

citizenship of the Member State in which they live may qualify to naturalise through their marriage to a citizen—a process that often has fewer restrictions than naturalisation based on length of stay. The citizen partner can also sponsor residence permits for family members living outside the country; for example, a UK national's EU-citizen spouse could sponsor their dependent child or parent, thereby avoiding often stricter third-country-national immigration and family reunification procedures.

The pattern is similar in France. In 2015, 57 per cent of UK-born men in the country lived as a couple with another Briton⁵³ and 27 per cent lived with a French partner.⁵⁴ UK-born women in France were slightly more likely to be living either with a British partner (60 per cent) or with a French partner (29 per cent) (see Figure 3). Among UK nationals not eligible to naturalise through marriage to a citizen of their host Member State, some may still be entitled to free movement rights as the partner of an EU citizen from another Member State. However, this is more difficult to discern through the available data. For example, many UK-born immigrants in France had immigrant partners with a different country of birth—16 per cent of men and 11 per cent of women—but it is unclear how many of these partners were EU citizens.

Some British families in the EU-27 have put down deep roots. For example, in the French region of Nouvelle-Aquitaine, where one-quarter of UK citizens in France live, most British residents are property owners with an average of ten years of residency.⁵⁵ In Spain, approximately 81 per cent of all Britons have been resident in the country for five years or more.⁵⁶ And in Germany, only 35 per cent of UK citizens had lived there for fewer than eight years as of 2017, the minimum period to qualify for naturalisation (see Table 3); meanwhile, 33 per cent had been in Germany for 25 years or more.⁵⁷ These long-term residents would face big disruptions to their lives if suddenly forced to return to the United Kingdom, for example, if they could no longer access pensions or health care. In Germany, UK citizens' average duration of stay was 19.1 years,⁵⁸ suggesting those

Table 2. Marital status of UK nationals in Germany, 31 December 2017

Total population with UK citizenship	Single	Married (with a German)	Widowed	Divorced	Unknown marital status
116,465	52,940	44,545 (13,960)	1,505	8,470	9,005
100%	45%	38% (12%)	1%	7%	8%

Source: Statistisches Bundesamt (Destatis), 'Foreign Population by Marital Status and Selected Citizenships on 31 December 2017', accessed 14 November 2018, www.destatis.de/EN/FactsFigures/SocietyState/Population/MigrationIntegration/Tables_ForeignPopulation/ForeignerMaritalStatus.html.

Figure 3. UK-born immigrants living as couples in France, 2015



Note: The available data only show place of birth and not citizenship, meaning the number of UK-born immigrants in France does not necessarily reflect all persons with UK citizenship.

Source: Institut National de la Statistique et des Études Économiques (Insee), 'Immigrés Vivant en Couple Selon Leur Pays de Naissance et Celui de Leur Conjoint en 2015', updated 12 July 2018, www.insee.fr/fr/statistiques/2381510.

Table 3. UK citizens' length of stay in Germany, 2017

	Length of stay (years)					
	Less than 1	1 to 3	4 to 7	8 to 14	15 to 24	25 or more
Persons	7,965	17,620	14,680	16,520	20,725	38,955
Percentage	7%	15%	13%	14%	18%	33%

Source: Destatis, 'Foreign Population by Duration of Stay and Selected Citizenships on 31 December 2017', accessed 14 November 2018, www.destatis.de/EN/FactsFigures/SocietyState/Population/MigrationIntegration/Tables_ForeignPopulation/DurationOfStay.html.

forced to return might have limited social networks in the United Kingdom and lack understanding of how the social system may have evolved in their decades away.

Brexit poses challenges for UK nationals living in the EU-27, regardless of whether they are in a family or not. That said, the effects on families could be profound: family cohesion could be disrupted, and family migration made more difficult. In the event that no deal is approved, some families could find their lives suddenly governed by an entirely different set of rules. Yet a relationship with a host-country national or a long residence history in the Member State could create a softer landing, allowing families to stay together when some members might not otherwise have a secure residence status.

V. CONCLUSION

The November 2018 final draft withdrawal agreement is a step toward a comprehensive solution on citizens' rights, yet it stops short of addressing many issues facing already vulnerable families. It also leaves existing rights that are crucial to many British families' livelihoods, such as sec-

ondary movement, off the table entirely. Ensuring that those who exercise freedom of movement, and their families, are protected after Brexit is not only a legal matter for the European Union, but an existential one that speaks to the heart of whether freedom of movement has evolved from the movement of labour (as it originally began) into genuine mobility for EU citizens and their families across Member States. It is thus crucial that governments on both sides of the Channel act now to plug the outstanding gaps and ensure that those most likely to be affected by Brexit do not fall through the cracks.

Whether there is a deal or not, the transition from EU citizen to third-country national after Brexit will be a challenging one for many Britons in the EU-27. Family members who already experience difficulties enjoying visa-free travel and residence, such as third-country-national family members, same-sex partners, and the economically inactive, may find their disadvantages compounded. After Brexit, new vulnerabilities may spread to hyper-mobile families, those who rely on temporary care from extended family members, and children preparing for further study or who rely on court-enforced maintenance. It is vital that Member States proactively work to manage these risks and to reassure British families that they can stay where they have made their homes.

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ABOUT THE AUTHOR



Aliyyah Ahad is an Associate Policy Analyst with the Migration Policy Institute Europe (MPI Europe), where her research focuses on European migration and integration policy, with a special focus on the European Union's partnerships with third countries, free movement and Brexit, and social innovation in refugee reception and integration.

Previously, Ms. Ahad completed a 12-month internship with the Bermuda Government's Cabinet Office. She also managed a research project for WPP Government and Public Sector Practice on how to improve communications between refugees and the public and humanitarian sectors. She also interned with MPI, and spent three months in Rabat, Morocco, volunteering with a centre that provided medical and social care to unauthorised migrant women who were pregnant.

Ms. Ahad holds a master of science in migration studies and a master of public policy, with distinction, from the University of Oxford, where she studied as a Rhodes Scholar. She also holds an honours bachelor of arts degree in political science and sociology from the University of Toronto, with high distinction. Ms. Ahad spent a year studying at Sciences Po Paris, where she received an exchange program certificate, cum laude.

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Residence Palace
15 Rue de la Loi, 5th Floor
1040 Brussels
Belgium

Phone: +32 (2) 235 2113