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The Personal Implications of the Referendum Results for (German) EU Citizens Living in the UK

Jule Mulder

University of Bristol Law School

[jule.mulder@bristol.ac.uk]

According to the Office for National Statistics' 2014 estimate, 300,000 UK residents were born in Germany and 131,000 are German nationals.¹ This makes them the fifth biggest group of immigrants in the UK by country of birth—preceded only by people born in India, Poland, Pakistan and the Republic of Ireland—and the twelfth largest group of immigrants in terms of nationality.² Thus, although Brexit's rhetoric against immigration has not directly targeted Germans, a large number will be affected by the UK's changing relationship with the EU. Just as for other EU citizens, their future status in the UK is all but certain.

What are the possible personal implications for German, and other European citizens, who exercised their EU right to free movement and immigrated to the UK? Of course the short (legal) answer is that nothing will happen in the short term even though protection under the 1969 Vienna Convention on the Law of Treaties is far from clear. European law is still applicable in the UK and the "new deal" negotiated in February 2016, will not be implemented. Changes can only come about once and if Article 50 TEU is triggered, and then, only if the withdrawal agreement changes the status of EU citizens in the UK, or free movement rights in general. While the reduction of (European) immigration was one of the top priorities for the Leave campaign, it is less than certain that EU immigration will actually be limited under the agreement that will have to be negotiated. In my view it is inconceivable that the EU will allow the UK access to the internal market without the right to free movement of persons or workers. This is the case not only because the EU has no interest in offering the UK a favourable deal (thereby encouraging other Member States to leave the Union) but also because the four freedoms are tightly and logically connected. Why should the EU allow the UK to benefit from the internal market (by exporting services/goods) while preventing other Member States and its citizens from doing the same (by providing human capital and a workforce)? Leaving the EU does thus not necessarily mean a reduction of EU migration, a fact which was also conceded by the Leave campaign, although conveniently only after the referendum.³ Even if the withdrawal agreement includes provisions to limit European immigration, it does not necessarily follow that this will directly affect the citizens who are already here. After all, the UK as well as the EU has an interest in accepting a sort of grandfathering of rights for citizens who already exercised their right to free movement. Otherwise the approximately 1.3 million Britons who currently live somewhere else in the EU might be obliged to return to the UK,⁴ which could put increasing pressure on the social services and the NHS. Finally, even if the UK introduces a (retroactive) "Australian style point system" as suggested by Nigel Farage,⁵ many European citizens being would probably be able to stay in the UK because they are university educated. Immediate change seems unlikely, but the detachment from the European Union and the possible rejection of direct effect always bears the risk that protection under the treaties, or the eventual withdrawal agreement, will be less effective than the current regime and that rights will be watered down over the years.

¹ See *Population by Country of Birth and Nationality Report: August 2015*, OFFICE FOR NATIONAL STATISTICS (27 August 2015) available at <http://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/internationalmigration/articles/populationbycountryofbirthandnationalityreport/2015-09-27>.

² In 2010 Germans were the fifth largest group in terms of both, nationality and country of birth. See *DataBlog*, THE GUARDIAN (9 September 2010) available at <http://www.theguardian.com/news/datablog/2011/may/26/foreign-born-uk-population>.

³ Ben Quinn, *Leave campaign rows back on key immigration and NHS pledges*, THE GUARDIAN (25 June 2016) <http://www.theguardian.com/politics/2016/jun/25/leave-campaign-rows-back-key-pledges-immigration-nhs-spending>.

⁴ Alberto Nardelli, Ian Traynor and Leila Haddou, *Revealed: thousands of Britons on benefits across EU*, THE GUARDIAN (19 January 2015) <https://www.theguardian.com/uk-news/2015/jan/19/-sp-thousands-britons-claim-benefits-eu>.

⁵ Adam Donald, *Immigration points-based systems compared*, BBC NEWS (1 June 2016) <http://www.bbc.co.uk/news/uk-politics-29594642>.

Moreover, the lack of immediate legal consequences does not mean that there are no personal implications for Germans, or other EU citizens, who live in the UK. Beyond the obvious concerns about the economic well-being of the UK, Brexit has a real effect on many jobs and what they entail, including new concerns about job security and career prospects, and the unseemly and uncomfortable anti-immigration rhetoric that is poisoning the political discourse and life.⁶ Take, for example, the academic staff at UK universities of whom more than 15% are non-British EU nationals.⁷ Brexit will affect funding of research projects and student/staff exchanges within the Erasmus program, the recruitment of talented students and staff from other European countries, as well as the research focus and activities that might no longer be recognised as relevant within the UK academic community. What are European lawyers, like myself, supposed to do during the time of withdrawal negotiations and post-Brexit? While constitutional European lawyers may be on high demand to comment on the negotiations and changing relationships in the near future, others whose research focuses on substantive EU law, such as EU employment law, EU procurement law, or EU environmental law, may find themselves in a position where they have to retrain to become national lawyers in their respective fields.

Alternatively, academics may choose to leave the UK as its turns its back on Europe. This, of course, would have profound effects on the UK as a research power house. It will also affect academics' career paths. Here, German citizens, whether academic or not, may have the advantage that the strong German economy should be able to accommodate these Brexit exiles' home-coming. Young EU migrants from, for example, Greece, Spain or Portugal, may not find themselves in such a comfortable position. They may have to try their luck in other European countries, which will often include the need to learn yet another language. But even for Germans, a return to their home-country after years in the UK undoubtedly will have effects on their career prospects. Many German academic and non-academic workers in the UK, including myself, have been attracted by the openness and flexibility of the British (academic) labour market, which often values talent more than titles and degrees.⁸ German academia, with its much stricter degree and career path requirements, will not necessarily be able to recognise the work experience gained in the UK's very different academic and educational system. Moreover, a choice to return is, of course, much more than an economic cost/benefit calculation. Many European citizens arrived in the UK as students or young professionals and now have made a home in their host country. They are often very well-integrated,⁹ have friends and family in the UK, and will not easily be able to leave their host country without significant personal costs, including the potential loss of personal relationships and private networks and support. After years in the UK, the home country can often look much more foreign, strange, and unfamiliar than the country of choice. Nevertheless, Germans, just like other EU citizens, will have to ask themselves whether there is a future for them in a country whose majority just rejected the post-war European consensus and where xenophobic, anti-immigration rhetoric and anti-intellectualism have become acceptable within the mainstream political discourse.¹⁰

⁶ Harriet Agerholm, *Brexit: Wave of hate crime and racial abuse reported following EU referendum*, THE INDEPENDENT (27 June 2016) <http://www.independent.co.uk/news/uk/home-news/brexit-eu-referendum-racial-racism-abuse-hate-crime-reported-latest-leave-immigration-a7104191.html>.

⁷ See *Free Online Statistics*, HIGHER EDUCATION STATISTICS AGENCY, available at <https://hesa.ac.uk/stats-staff>.

⁸ See, e.g., Oliver Imhof, *Why I'll leave the UK if Britain votes no to Europe (Opinion)*, THE GUARDIAN (24 February 2016) <https://www.theguardian.com/commentisfree/2016/feb/24/leave-uk-brexit-german-london-human-rights>.

⁹ See, e.g., Helen Pidd, *Britain's German-born population prefers life under the radar*, THE GUARDIAN (14 December 2012) <https://www.theguardian.com/uk/2012/dec/14/german-born-population-uk-census> and Natalie Tenberg, *Krauts in Limey Land: Germans Go Eurotrash in London*, SPIEGEL ONLINE INTERNATIONAL (13 June 2005) <http://www.spiegel.de/international/krauts-in-limey-land-germans-go-eurotrash-in-london-a-357978.html>.

¹⁰ See, e.g., Oliver Imhof, *Why I will be leaving Brexit Britain (Opinion)*, THE GUARDIAN (25 June 2016) <https://www.theguardian.com/commentisfree/2016/jun/25/why-leaving-brexit-britain> and Julia Ebner and Janet Anderson, *I'm an Austrian in the UK – I don't want to live in this increasingly racist country (Opinion)*, THE GUARDIAN (24 June 2016) <https://www.theguardian.com/commentisfree/2016/jun/24/country-increasingly-racist-austrian-uk-briton-netherlands-eu-referendum-result>.