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BREXIT: THE CONSEQUENCES FOR EUROPEAN MIGRANTS IN THE EU

INTRODUCTION

In the near future Theresa May intends to implement Article 50, which gives the green light for the already heavily debated negotiations on how the Brexit should be executed. Over an expected two-year period, these negotiations should give shape to the European Union without the United Kingdom - a reality affecting Britons and Europeans alike.

The Brexit will have a great impact on immigration practices. Whether you emphasize or underplay the effect on net immigration numbers, politicians are rightfully pointing out that existing migrants find themselves in vulnerable positions and should be considered with a sense of morality.

European migrants in the UK face uncertainty, as their future residence in the county cannot be taken for granted. Similarly, UK nationals residing in EU countries depend on Brexit negotiations for clarity about their residential status.

Immigration specialists in all member states are equally concerned and are trying to find answers to the many questions raised. The immigration lawyers of Visalaw International have put their heads together and produced this Report containing information and advice for expats residing in different EU countries.

NETHERLANDS

HOW SHOULD BRITS IN THE NETHERLANDS REACT TO THE BREXIT?

INTRODUCTION

In June this year a majority of the UK population voted for a withdrawal of the UK from the EU, or Brexit. The news shook the world as much as it shook the British population. Ever since the announcement was made speculation about the implications has surfaced, with little certainty about the actual consequences until now.

As immigration specialists, we make the same inquiries. British expats in the Netherlands will want to know whether they can continue living in the Netherlands, and how. They will consider permanent residence options, maybe even citizenship. In this article we address some of these concerns.

BREXIT SCENARIOS

The rights of British expats in the Netherlands greatly depend on the agreement that will be reached between the UK and the EU member states. Most unfavorable for expats would be the

complete exit of the UK from the EU. In such case, Britain reverts to the rules of the World Trade Organization and Brits will need to comply with the migration rules for non-EU nationals.

There are thinkable other agreements, however. If Britain safeguarded its membership with the EEA and/or EFTA, residency rights of British citizens in the Netherlands would not change. It could also aim for an agreement like the one the EU currently has with Turkey, which includes a customs union and more flexible immigration rules.

BECOMING DUTCH?

Is it a good idea to become a Dutch citizen? This question we receive from many worrying Brits in the Netherlands. Yes, it is possible and would mean that none of the above applies.

Currently, becoming a Dutch citizen is possible after 5 years of residence in the Netherlands. There is a proposal to extend the naturalization period to 7 years and this bill is likely to be passed. However, dual citizenship is not permitted in many cases. Thus British nationality would have to be renounced.

There are some ways to reach dual citizenship but the exceptions are not easy to understand. If a Brit is married to a Dutch national he can obtain Dutch citizenship without renouncing British citizenship. Having Dutch ancestors might help in some cases. In general dual citizenship possibilities depend greatly on, personal circumstances. All is laid down in Dutch legislation that has been amended over the years. Therefore former Dutch citizenship acts needs to be taken into account at all times. Considering all this, the naturalization option is one to study carefully.

PERMANENT RESIDENCY

A less drastic measure is to apply for a permanent residence in the Netherlands. As a permanent resident, you are entitled to stay in the Netherlands without being tied to an employer or partner, and with free access to the labor market.

British citizens who have lived in the Netherlands for a minimum of 5 consecutive years can apply for a permanent residence permit if they meet all requirements. All previous residence permits can be accumulated to count the years of stay, but if there was any period in which the expat had no valid permit, the counting starts from the moment residency was obtained again.

As EU nationals, Brits have the advantage not to be subjected to the civic integration exam, a requirement not to be taken lightly. In this light, applying for a permanent residence permit is advisable. However, it is not clear whether the permit remains valid when the UK is no longer an EU member state, or if any rights will be granted to permanent residents in the country.

WHAT ELSE?

If the Britons will be subjected to the immigration rules for non-EU nationals it would not mean that residence in the Netherlands becomes impossible. There are a number of immigration routes tailored to various immigration purposes. Many highly skilled migrants find their way to the Netherlands, as well as entrepreneurs, intra corporate transferees and students. As nothing is clear about the future positions of the British expat, it is only wise to study these options, and if needed consult a specialist.

SWITZERLAND

HOW SHOULD BRITS IN SWITZERLAND REACT TO THE BREXIT?

INTRODUCTION

At present the bilateral agreements with the European Union (EU) are the essential legal basis for relations between Switzerland and the UK. When the UK leaves the EU, these agreements will no longer apply. What are the consequences for British expats in Switzerland? Can they continue living in Switzerland, and how?

BREXIT SCENARIOS

For the time being, nothing will change for British citizens from a legal perspective. They have voted in favour of leaving the EU. The British government must now decide how to proceed on the basis of the result of the referendum. A withdrawal will have to be negotiated by the UK and the EU. Until these negotiations are completed, there will be no change in the current situation.

The Federal Council of Switzerland has been closely following the debate and events in the UK for several months and is evaluating the consequences for Switzerland. At present many questions remain unanswered.

BECOMING SWISS?

Foreigners who have been residents in Switzerland for twelve years may apply for naturalisation. The State Secretariat for Migration examines whether applicants are integrated in the country, are familiar with Swiss customs and traditions, comply with the Swiss rule of law and do not endanger Switzerland's internal or external security. This examination bases on cantonal and communal reports. If the requirements provided by federal law are satisfied, applicants are entitled to obtain a federal naturalisation permit from the State Secretariat for Migration.

Naturalisation proceeds in three stages. Thus the federal naturalisation permit only constitutes the Confederation's "green light" for the acquisition of Swiss nationality. However, the cantons and communities have their own, additional residence requirements which applicants have to satisfy. For example, the Canton Zürich requires a short residence for at least two uninterrupted years in the community of prospective naturalisation.

Swiss citizenship is only acquired by those applicants who, after obtaining the federal naturalisation permit, have also been naturalised by their communities and cantons. As a rule, there is no legally protected right to being naturalised by a community and a canton.

Acquiring Swiss citizenship will give the right to vote and to stand for public office. You will be subject to the same legal obligations as other Swiss citizens. For example, Swiss men aged 18 to 34 have to undertake military service. However, unlike Swiss residence permits, which lapse when you leave the country, you won't lose your Swiss citizenship if you live abroad.

PERMANENT RESIDENCY – PERMIT C

A settlement permit (permit C) allows you to live in Switzerland under the same conditions and to profit from most of the benefits Swiss nationals do. The settlement permit is normally granted to British People after five years of continuous stay in Switzerland. This permit is indefinite and must have no conditions attached. However, the C permit is valid only for five years. The purpose of this period is to enable the Swiss authorities to check whether the permit holder is still a resident in Switzerland.

WORK PERMIT – PERMIT B

A year-round residence permit (permit B) is granted when you are in possession of an employment contract of at least twelve months' duration or of unlimited duration. The initial period of validity of the permit is five years and it will be renewed for another five years without any further procedures if the foreign national still satisfies the relevant requirements.

WHAT ELSE?

At the moment, all bilateral agreements that Switzerland has concluded with the EU-States will continue to apply to UK citizens. Once the withdrawal agreement (which is yet to be negotiated) between the EU and the UK comes into force, the situation will change. At the same time it is in the interests of the UK and Switzerland to find a workable solution for their citizens. Switzerland wishes to ensure that the existing mutual rights and obligations concerning its relationship with the UK will continue to apply after the UK leaves the EU. Even, if these rights and obligations will change, it is very likely, that those UK citizens, who have a permit to live in Switzerland (permit B or C) will keep the possibility to stay.

SPAIN

THE LEGAL-MIGRATION EFFECTS OF BREXIT ON UK NATIONALS IN SPAIN

INTRODUCTION

One of the main consequences and concerns about the Brexit is the situation The UK nationals that are currently living in other countries of the European Union (or who consider moving in the future) where they enjoy the right to freedom of movement and residence, will have to face. The same situation applies to the EU nationals residing currently in the UK.

As of today, at least from the Spanish perspective, it is important to convey a message of calm to all those facing such circumstances as there are alternative solutions, either through new regulations or through the existing ones, so that such persons are not under an illegal status in the future.

According to the latest publications of the Spanish National Institute of Statistics (INE), the number of the UK nationals registered in Spain does exceed 250,000. Below we will tackle the different changes that may apply.

POSSIBLE CHANGES IN THE LEGAL SCHEME APPLICABLE TO NATIONALS OF THE UNITED KINGDOM

Except an agreement whereby the national British, once produced the exit of the European Union, would be subject to the EU scheme (as it is the case of Switzerland and the European economic area), the options that could be applicable, regulated under the current Spanish regulations, would be the following:

- (A) Third country nationals' dependents of EU national
- (B) General Scheme
- (C) Global mobility

Third country national dependent of an EU national

The UK nationals will only continue to be subject to the EU scheme as per the RD 24/2007 if they are family members of a national of the European Union, European economic area or Switzerland and come to Spain to join him or her. In these cases, the UK national will no longer be included in the Community scheme as "pure EU national" but as a "Third national family member of an EU citizen", and must therefore obtain the residence card as dependent of EU national.

GENERAL SCHEME

In case the EU scheme does not apply, the British nationals will be subject to general immigration framework or to the global mobility depending on their personal and professional circumstances as well as the most beneficial avenue.

(A) The UK nationals already in Spain:

In relation to the UK nationals who are residing in Spain and are registered as residents, the legislation does regulate the shift from the EU national status to the third country national status not included in the Community scheme. In this case, they have the right to apply for a non-lucrative residence permit or a work and residence permit as employee depending on the validity of the documentation they hold and in case they fulfill the requirements.

In the same line, it is possible to apply for a work and residence permit as self-employee, work permit exemption, residence and work permit for researchers or a residence and work permit as highly qualified professionals.

For these purposes, the UK national who has been documented under the EU scheme must fulfill the labor requirements to obtain the corresponding permit, in accordance with provisions in the RD 557/2011.

Also, this scheme regulates the long term residence permit and EU long term residence permit which applies for the UK nationals, who after the exit of the EU, have been residing in Spain legally and continuously during the last five years prior to the submission of the application for these permits.

(B) The UK nationals outside Spain:

The UK nationals not residents in Spain, by the time the exit takes place, will be subject to the Schengen acquis in relation to short stays (up to 90 days within 180 days) unless agreed otherwise. They might be subject to obtain a stay visa for tourism or business.

In relation to the residence in the country, if they intend to spend more than 90 days in 180 day period, it is required to obtain the corresponding permit and visa prior the residency takes place. Unless they are subject to exceptions, the labor market test will apply. This could lead to the denial of the application.

GLOBAL MOBILITY

Apart from the possibilities established in the general scheme, the UK nationals residing or not in Spain at the moment of the exit of the EU, have the possibility to apply for permits and visas are regulated under the Act 14/2013 provided that they are included in one of the following categories:

- (A) Investors
- (B) Highly qualified professionals
- (C) Entrepreneurs
- (D) Intra-company transferees.

If the British national qualifies for one of the four categories above indicated, he/ she could obtain the permit and/or visa without being subject to the labor market test.

As per the above mentioned and otherwise agreed, the Exit of the United Kingdom will imply in the majority of the cases the amendment of the immigration legal scheme applicable to nationals of the United Kingdom.

RECOMMENDATIONS

We conclude by recommending the British nationals living in Spain:

(A) To apply, in case they have not done it yet, for the certificate of registration of EU national living in Spain in order to facilitate access to other immigration status once the exit is effective. The certificate of registration will serve them as proof of residence in Spain, which can be very beneficial if we take into account the following:

- ✓ After 5 years of continuous residence, it is possible to obtain a long-term residence permit.
- ✓ After 10 years of continuous residence, it is possible to apply for Spanish citizenship by residence.

(B) Registration of marriage: UK citizens married to a national of the EU, must register their marriage at the appropriate public register to apply for the residence card as dependent of an EU national if required. Otherwise, the access to the EU scheme will be as of extended family rather than strict family.

(C) Application for Spanish citizenship by the UK national or the spouse (taking into account that nationals of former Spanish colonies; Latin America, Philippines, Equatorial Guinea, need only two years of continuous residence in Spain to apply for Spanish citizenship, while a UK national needs to evidence 10 years of legal and continuous residence).

UNITED KINGDOM

THE POSITION OF EEA NATIONALS IN THE UK AFTER BREXIT

The position for European citizens living in the UK following the Brexit vote remains unclear and it looks as though it is going to be many months, if not a year or two, before the British Government decides what rights, if any, European nationals will have in the UK following the UK leaving the European Union.

In these circumstances, it is most important that European nationals living in the UK who do not currently hold what are called EEA Residence Cards, or EEA Permanent Residence Cards, should make applications for these cards as soon as possible, to enable them to prove that they held a Residence Card valid for the UK prior to the UK leaving the European Union.

EEA nationals who have lived in the UK exercising Treaty rights for five years of qualifying residence can apply for EEA Permanent Residence Cards. However, EEA nationals who are living in the UK exercising Treaty rights but have not completed five years of qualifying residence can only apply for EEA Residence Cards.

It should also be noted that it is compulsory to hold an EEA Permanent Residence Card before applying for British citizenship.

Unfortunately, applications for Residence Cards are time consuming and can be complicated, depending on the individual circumstances. The Immigration Team at Gross & Co will be pleased to assist with any such applications.

UK based employers who are employing European nationals should encourage such employees to apply for EEA Residence Cards as soon as possible, not just for the employee's benefit, but also to provide as much assurance as can be provided at present as to the right of the UK employer to continue to employ the European national in the future.

Currently it appears likely that the UK government will provide a route to permanent residence for EEA nationals residing and exercising Treaty rights in the UK prior to service of the Article 50 Notice, but the position may well be different for those arriving in the UK after the Article 50 Notice has been served.