

BREXIT : A PRACTICAL GUIDE

Brexit's consequences on the British
nationals working as agents and
officials of the EU Institutions

Brexit : a practical guide

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- I. Brexit's impact on your professional status and career
- II. Private International Family Law implications
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Introduction

- June 24th 2016: UK voted to leave the European Union
- Summer 2016: Theresa May announces that UK will not start the Brexit process before the end of 2016
- 2017: UK invokes article 50 of the Treaty on the European Union ?
- 2017-2018 (or later): negotiations UK / EU
- No effective Brexit before 2019 at the earliest

What concrete consequences for the UK nationals working as EU officials or agents ?

Article 50 of the Treaty on the European Union

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.
A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.
5. If a State which has withdrawn from the Union asks to rejoin, its request shall be subject to the procedure referred to in Article 49.

I. Brexit's impact on your professional status and career

The nationality requirement

- Article 28 (a) SR : « *an official may be appointed only on condition that he is a national of one of the Member States of the Union, unless an exception is authorized by the appointing authority (...)* »
- Consequence: in case of Brexit, British nationals will not fulfill the recruitment requirement (nationality) anymore:
 - Application of article 49 SR : compulsory resignation ?
 - Application of article 42 c or 50 SR : Leave / retirement in the interests of the service ?

Remedies ?

- **Exception to article 28(a) granted by the AA ?**

Practical example : a moroccan national came in belgium in 1977 and has worked as cook at the EESC as from 1981. He has been appointed as official under derogation provided for in article 28 (a)

- **Interim measures ?**

Article 50 of the Treaty on European Union: possible agreement for interim measures applicable to EU officials/agents to remain in service for a certain period to organise the consequences of Brexit

- **Acquisition of another nationality ?**

Acquisition of another nationality: requirements ?

- **Belgian nationality (acquisition by declaration):**
 - Legal residence for five years in Belgium + knowledge of French, Dutch or German (A2 level) + participation in the country economic life + proof of participation in the host's community life
 - Legal residence for ten years in Belgium + knowledge of French, Dutch or German (A2 level) + proof of participation in the host's community life
- **Specific questions:**
 - Calculation of the duration of the legal residence ?
 - Proof of legal residency and validity of the diplomatic card of residency ?

Acquisition of another nationality: requirements ?

- **French nationality (acquisition by declaration):**
 - Main requirements for acquisition of nationality through your french spouse:
 - 5 years of marriage prior to the introduction of request
 - Affective and material community of life
 - Knowledge of french equivalent to B1 level

Impact of Brexit on the expatriation or foreign residence allowance ?

- Scenario 1: a british official acquires the nationality of the Member state where he/she is employed
 - *in principle, the official can no longer claim the benefit of the allowance (see EU CST judgment, 26 June 2013, F-21/12):*
« an official's change of nationality may be regarded as an event capable of substantially changing his situation and, accordingly, constitute a fact warranting review of his situation »
- Scenario 2: a british official acquires the nationality of another Member state
 - He should continue to benefit from the allowance

Impact of Brexit on the travel expenses?

- Article 8 of annex VII SR : only officials entitled to the expatriation or foreign allowance residence can claim travel expenses
- Article 8 §2 A VII : where the place of origin is outside the territories of the MS of the Union / MS of the European Free trade association: the flat-rate payment based on the geographical distance between the official's place of employment and the capital city of the MS whose nationality he holds

Impact of Brexit on pension rights ?

- Creation of a standalone pension fund ?
- Previous examples : UEO / SATCEN

In the meanwhile ...

- UK remains one of the Member states of the EU:
UK nationals have the same rights and obligations than other EU officials and agents (working conditions, social security, assessment, promotion ...)
- Limits: access to political position could be limited ?

II. Private International Family Law implications

Private International Law (PIL)

- Can I bring my case before my local court ?
(jurisdiction)
- What law should apply to the dispute?
(applicable law)
- Can I get my judgment recognised/enforced
abroad?
(recognition & enforcement)

Nowadays: 5 Regulations

- Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (called Brussels II a)
- Council Regulation (EU) No 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation (called Rome III)

Nowadays: 5 Regulations

- Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (called Maintenance Regulation or Bruxelles III)
- Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes (hereafter Matrimonial property regimes Regulation)

Nowadays: 5 Regulations

- Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (called Succession Regulation)

Impact of Brexit: Family Law field

- UK ≠ Member State **BUT** third country

Regulations	Before Brexit	After Brexit
Brussels II a		KO
Rome III		KO
Maintenance Regulation		KO
Matrimonial property regimes Regulation		KO
Succession Regulation		KO

Impact of Brexit: Family Law field

- Cross-border divorce, legal separation or marriage annulment issues

Regulations	Before Brexit	After Brexit
Brussels II a	OK - Common rules on: <ol style="list-style-type: none"> 1. Jurisdiction 2. Recognition and enforcement 	KO
Rome III	KO	KO

⇒ PIL: 1986 Family Law Act? Other Conventions? New specific regime?

Impact of Brexit: Family Law field

- Cross-border parental responsibility issues and child abduction

Regulations	Before Brexit	After Brexit
Brussels II a	<p>OK</p> <ul style="list-style-type: none"> - Common rules on: <ol style="list-style-type: none"> 1. Jurisdiction 2. Recognition and enforcement 3. Cooperation between central authorities 	KO

⇒ PIL: Hague Conventions (1996 Hague Child Protection Convention, 1980 Hague Convention on the Civil Aspects of International Child Abduction)?
1980 Luxembourg Convention? New specific regime?

Impact of Brexit: Family law field

- Cross-border maintenance applications

Regulations	Before Brexit	After Brexit
Maintenance Regulation	<p>OK</p> <ul style="list-style-type: none"> - Common rules on: <ol style="list-style-type: none"> 1. Jurisdiction 2. Applicable law (Hague Protocol) 3. Recognition & enforcement 	KO

=> PIL: Hague Conventions? New specific regime?

Impact of Brexit: Family Law field

- Matrimonial property regimes

Regulations	Before Brexit	After Brexit
Matrimonial property regimes Regulation	KO	KO

⇒PIL

- International successions matters

Regulations	Before Brexit	After Brexit
Succession Regulation	KO	KO

=> PIL

Impact of Brexit : Family Law field

- For UK courts

Regulations	Before Brexit	After Brexit
Brussels II a	OK	KO
Rome III	KO	KO
Maintenance Regulation	OK	KO
Matrimonial property regimes Regulation	KO	KO
Succession Regulation	KO	KO

+ PIL (Conventions, etc.)

Impact of Brexit : Family Law field

- For Belgian courts

Regulations	Before Brexit	After Brexit
Brussels II a	OK	OK
Rome III	OK	OK
Maintenance Regulation	OK	OK
Matrimonial property regimes Regulation	OK	OK
Succession Regulation	OK	OK

+ Conventions (& 2004 Code of Private International Law)

Impact of Brexit : Family Law field ?

- NOT drastic
 - BUT lack of legal security and predictability
- => Negotiations on a specific regime?

III. Tax implications

- A. Main features of the tax regime of EU officials
- B. Impact of loss of service
- C. Impact of change of nationality/acquisition of second nationality to preserve service

- A. Main features of the tax regime of EU officials
- Articles 12 and 13 of the (7th) Protocol on privileges and immunities of the EU (OJEC 7.6.2016)
 - Art. 12 : « *Officials and other servants of the Union ... shall be exempt from national taxes on salaries, wages and emoluments paid by the Union.* »

- A. Main features of the tax regime of EU officials
- Art. 13 : if establishment to [Belgium] from [other country] solely for the performance of service of the Union deemed to remain tax resident of [other country]
→ And therefore non-tax resident of Belgium

B. Impact of loss of service

- No exemption anymore (art. 12^{PPI} not applicable anymore)
 - Income of (new) profession/business is taxable
- Tax regime of your EU pension
 - Exempt (EU Regulation nr. 549/69, art. 2; confirmed by the Belgian tax administration : Circular AFER 6/2010)

B. Impact of loss of service

- Non-resident tax status anymore (art. 13^{PPI} not applicable anymore)
 - become Belgian tax resident (unless you leave the country) → subject to Belgian tax on worldwide income.

C. Impact of change of nationality/acquisition of second nationality to preserve service

- Art. 12^{PPI} exemption not subject to nationality requirement
 - No impact whatsoever
- Art. 13^{PPI} non-resident tax status not subject to nationality requirement
 - No impact whatsoever

Conclusion

Thank you for your attention !

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