

Brexit on the Backburner

Citizens' rights and the implementation of the withdrawal agreement in a pandemic

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Executive Summary

After years of uncertainty and a series of delays, the United Kingdom formally left the European Union on 31 January 2020. As part of the withdrawal agreement, which governs the United Kingdom's departure, there is a transition period until 31 December 2020. This is followed by a grace period of at least six months, until 30 June 2021, in which those eligible can acquire a new post-Brexit status. The citizens' rights portion of the agreement sets out the framework for continued legal residence for EU nationals in the United Kingdom and UK citizens in the remaining EU Member States, as well as their families. Governments can, however, unilaterally decide to require EU and UK nationals living on their territory to apply for a new residence status, and in some cases failure to comply by the imposed deadline will result in the loss of lawful immigration status and the associated rights. Against such a tight timeline, and with such serious repercussions for mobile Europeans and families, governments have a very small margin for error in designing and implementing these post-Brexit status systems. But just as EU Member States were starting to switch gears from no-deal scenario preparation to planning how to implement the withdrawal agreement, the world was turned upside down by the COVID-19 pandemic.

At a time when information outreach and support with the residence registration process should have been stepping up, especially for hard-to-reach groups with limited digital access or literacy, the public-health crisis and its economic aftershocks have shifted priorities and attention away from Brexit. They have also put additional strain on public administrations, including those responsible for residency. Governments are in a race against time to finalise their plans by the end of the transition period to implement the withdrawal agreement at a national level, draft and adopt legislation and guidelines, train officials, and conduct outreach to target groups.

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Only a few governments have even announced their plans on citizens' rights, let alone begun implementation. The United Kingdom, home to approximately 3.7 million EU citizens—the vast majority of the approximately 4.6 million people potentially eligible

for post-Brexit status—is the furthest along, having rolled out its pilot EU Settlement Scheme in 2019 before scaling it up. But among the 26 EU countries with responsibilities for citizens' rights (referred to in this policy brief as the 'EU-26')—Ireland is exempt because of the Common Travel Area with the United Kingdom—only Italy, Malta, and the Netherlands had launched registration schemes before the pandemic began. Social-distancing measures to stop the spread of the virus put the brakes on any in-person parts of the process, such as collecting biometric data for residence cards, or retrieving and submitting documents required to file an application. And at least one Member State, France, which has the second-largest population of UK nationals in EU-26, was forced to delay post-Brexit status implementation plans from July to October 2020 in order to address other administrative backlogs.

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For mobile EU and UK citizens caught in the middle of this perfect storm of Brexit and public-health crisis, the health and economic effects of the pandemic have exacerbated existing vulnerabilities. Among the groups most affected are families that have members who are third-country nationals and are separated by international travel restrictions, as well as pensioners with pre-existing medical needs. But it has also created new risk categories, such as for the newly unemployed (including frontier and seasonal workers) who may no longer meet the conditions of the European Union's Free Movement Directive—the foundation of the withdrawal agreement—and may also have difficulties accessing benefits. With less than four months until the end of the transition period, and no moves (yet) to formally extend it,

policymakers will need to make the most of this limited time to 'pandemic proof' their implementation plans against potential second and third waves of COVID-19 and to prevent vulnerable groups from falling through the cracks. Among the steps governments should consider are:

- ▶ **Investing in (joint) communications and smart outreach.** It is urgent for governments to publicly announce what kind of registration process they will implement, what documentary evidence will be required, and the registration timeline so that citizens can prepare. Communications on these topics should also be tailored to their target populations, for example by including a mixture of online and offline resources; made available in applicants' native languages; and disseminated through official channels and schools, care homes, hospitals, and other institutions that come into contact with vulnerable groups. Governments can also pool resources to co-create websites and video templates that can be adapted to different national contexts, or to staff a joint helpline.
- ▶ **Streamlining processes and keeping evidence requirements minimal.** Application systems should incorporate a mixture of online and offline options so they will not be totally disrupted by future lockdowns, should they occur. This hybrid approach will also help ensure they are accessible to applicants who are not tech savvy. In addition, governments should consider waiving traditional requirements to obtain (permanent) residency, such as on being physically present (or 'habitually resident') in a country for at least six months in a calendar year, especially for persons trapped abroad due to travel restrictions, or on having documents translated and

notarised, which can be costly and time-consuming for applicants.

► **Building up support for civil-society organisations.** Such organisations are well positioned to help UK nationals in the EU-26 navigate registration processes. The UK government launched a GBP 3 million effort to assist particularly vulnerable Britons, but this only covers a handful of EU-26 Member States. With limited room for error or delay between when post-Brexit residence systems start operating and when they end, civil-society organisations could conduct outreach to hard-to-reach groups (including those in remote and rural areas) and thus help prevent eligible people from missing the deadline or submitting incomplete applications. They can also support awareness-raising among the general public, including employers, about what the post-Brexit status means and which rights come with it. The UK government has also provided funding to charities and voluntary organisations to support vulnerable EU citizens applying to the EU Settlement Scheme in the United Kingdom. But as is the case for organisations in the EU-26, the funding will end in March 2021. Its extension would enable organisations to continue providing these essential services, reach those most at risk of not applying by the deadline, and recover the time lost to the pandemic and lockdown.

► **Establishing monitoring and feedback loops from the very beginning.** Such mechanisms can track both user experience and performance, and thus help governments identify and address bottlenecks or discrepancies in how applications are processed by different local authorities. Even if the transition period is not extended, states can decide unilaterally to extend the

grace period for potential applicants to register. Monitoring data and clearly defined benchmarks can also help governments determine if and when to unilaterally extend the grace period, for example if registrations are far below expectations. Governments should also establish clear and regular feedback channels with civil-society stakeholders, who can help frontload improvements, such as by reviewing application templates, communications strategies, and guidance for frontline staff to reduce the need for subsequent changes.

It is impossible to predict how the coronavirus pandemic will evolve in the coming months, but it threatens to make implementing the withdrawal agreement's provisions on citizens' rights more difficult, while also increasing those citizens' vulnerabilities. But regardless of COVID-19, Brexit will have life-altering impacts for approximately 4.6 million EU nationals and UK citizens, as well as an untold number of their family members. Governments on either side of the Channel bear a huge responsibility to ensure that all eligible persons are able to register and receive a post-Brexit status. The pandemic and the economic upheaval it has brought have shone a spotlight on how important it is for members of a society to be able to access the full spectrum of supports and benefits to which they are entitled; for mobile EU and UK nationals, this includes those linked to their rights under the withdrawal agreement. Residency is the first hurdle—but it is not the end of the race. And with the outlook of reaching a trade agreement between the European Union and the United Kingdom looking increasingly grim, it will be all the more vital to provide assurances to mobile Europeans and Britons that their rights under the withdrawal agreement are guaranteed and will be fairly implemented, regardless of the shape of future economic and political relations across the Channel.

1 Introduction

The COVID-19 pandemic hit Europe with full force just weeks after the United Kingdom's formal departure from the European Union on 31 January 2020.¹ The terms of withdrawal, only ratified in the final hour, bought governments eleven months to negotiate a trade deal and iron out implementation plans. This includes securing the rights of an estimated 3.7 million EU nationals in the United Kingdom and approximately 888,000 UK nationals in the European Union.² And with emigration rates of UK nationals ticking upwards since the referendum, the latter figure could swell as people rush to move to the European Union before the cut-off.³

Yet with countries consumed by the pandemic, and many public services playing catch-up after weeks of suspended operations, the public-health response has swallowed up much of the transition period, which is due to end on 31 December 2020. Negotiations on the trade deal, already moving at a snail's pace, are increasingly dicey, with the United Kingdom threatening to walk away if a deal is not concluded by 15 October 2020; the country has also threatened to breach parts of the withdrawal agreement related to the internal market.⁴ In such a climate, the possibility of agreeing an extension to the transition period, which could stave off a cliff-edge Brexit, appears remote.⁵ Both sides have agreed to a grace period of at least six months, until 30 June 2021, for eligible citizens to register for a post-Brexit status. But governments have lost precious time that could have been used to expand capacity, train frontline officers, and increase outreach to affected residents ahead of the end of the transition period, as the coronavirus pandemic has largely forced policymakers' and publics' attention away from the implementation of the EU-UK withdrawal agreement.

Government-imposed lockdowns, while necessary to get the pandemic under control, have also had

several negative effects on citizens' rights. They reduced access to in-person public services, including residency registration; moved procedures and support online, placing them out of reach for people with limited digital literacy and access; and increased backlogs and processing times, including for time-sensitive dual citizenship applications. How the pandemic will evolve over the next months—and how governments and publics will respond—is uncertain. It is therefore essential for EU and UK policymakers to prepare with different potential scenarios in mind, including a possible second (or even third) wave of infections, and to consider how these will affect citizens' rights under the withdrawal agreement.

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This policy brief looks at what policymakers need to consider as they adapt their implementation plans for the new COVID-19 reality, what issues risk being overlooked, and which vulnerable groups may be falling through the cracks. With the rights of approximately 4.6 million EU and UK citizens at stake—as well as an unknown number of their third-country-national family members—policymakers should act before it is too late.

2 Challenges at the Crossroads of Brexit and the Pandemic

Beyond shifting people's attention away from Brexit, the COVID-19 pandemic is creating new vulnerabilities and challenges while also compounding some of the existing difficulties EU nationals in the United Kingdom and UK nationals in EU Member States face

when seeking to prove their status and access their rights. Pre-pandemic surveys already demonstrated the negative impact of Brexit on the mental health of those affected.⁶ The limited research that exists suggests that the pandemic has added further stress and financial uncertainty, alongside health risks. For example, in a survey of UK nationals living in the EU-26 (the remaining Member States excluding Ireland), respondents indicated that the negative impact of the pandemic on their finances was their top concern, followed by the difficulty of visiting family either in the United Kingdom or elsewhere in the European Union.⁷ Only 6 per cent of those surveyed felt that they or their families would not be particularly affected by the combined impact of the looming end to the transition period and the pandemic.⁸

A. *Health-care challenges*

COVID-19 has had far-reaching impacts on nearly every aspect of society, but its most harmful medical consequences have not been borne equally. The United Kingdom has the highest COVID-19 mortality rate of any country in Europe, placing EU-27 nationals (and all residents) potentially at greater health risk.⁹ And of the approximately 775,000 Britons in the EU-26, the biggest share live in Spain¹⁰—another European country heavily affected by the coronavirus. While approximately 66 per cent of the British population in the EU-26 is between 15 and 64 years old, this figure varies widely by country. In Spain, 41 per cent of UK nationals are over age 65, placing them in the high-risk category for infection.¹¹ At the same time, fears of the virus, lockdown measures, travel restrictions, and mandatory quarantines before and after travel¹² are potentially limiting the care vulnerable and isolated family members would normally receive from loved ones.

Until the end of the transition period, UK nationals in the EU-26 and EU nationals in the United Kingdom should be able to access health care as normal.

But recent arrivals and others who have not yet registered may face difficulties, especially where in-person registration is required and offices have either been closed or are operating at reduced capacity. For example, Italy has been severely affected by the pandemic, and face-to-face services in local jurisdictions came to a halt during lockdown, raising concerns about the implications of the resulting delays and backlogs for the ability of UK nationals to register for their new status under the withdrawal agreement and thus access health-care services and jobs that are only available to Italian and EU citizens (e.g., teaching and other positions in schools and universities).¹³

B. *Economic uncertainty*

Early estimates indicate that more than 80 per cent of the global labour force is working in jobs facing either a full or partial reduction of working hours as a result of COVID-19 lockdowns; this translates into as many as 200 million job losses worldwide.¹⁴ Jobs in Europe, Central Asia, and the Americas are most at risk due to the high concentration of workers in those economic sectors hit hardest by the crisis (retail, tourism, manufacturing, transport, entertainment, and construction).¹⁵

Since March 2020, governments in the EU-27 countries¹⁶ and the United Kingdom¹⁷ have set up comprehensive financial support packages to help businesses and individuals survive the pandemic and its dire economic consequences. By April 2020, more than 40 million people in Europe were enrolled in government-backed furlough schemes. But it is unclear how many of these jobs will survive once the schemes end.¹⁸ Meanwhile, some workers are likely to have limited access to furlough, sick pay, or other types of grants; their numbers include gig workers on irregular contracts, the self-employed who do not meet eligibility conditions, and those engaged in informal work or employment relationships with

limited social security contributions and coverage. Many employed and self-employed people who have already lost their jobs are having difficulties accessing unemployment benefits, leaving some in vulnerable situations.¹⁹

The pandemic-related economic challenges many residents of Europe face are often compounded for those in the process of adjusting their status in light of Brexit. In the United Kingdom, some EU nationals who have been granted pre-settled status (temporary residence under the withdrawal agreement) have not been able to access universal credit, as the burden of proof is higher than for those who are granted settled status (permanent residence) and requires evidence of not only their residence in the United Kingdom but also that they meet criteria under the EU Free Movement Directive.²⁰ For example, the United Kingdom and EU Member States set their own threshold for determining whether work meets the criteria of ‘genuine and effective’, which may exclude some people with irregular contracts and small salaries.²¹ And other forms of labour may not qualify someone as a ‘worker’, such as caring for someone with public benefits in exchange for a carer’s allowance.²² This is not only frustrating for status holders, but also raises a question over whether the full spectrum of citizens’ rights under the withdrawal agreement is being protected, beyond basic residency, as well as the extent to which obtaining residency under the withdrawal agreement provides access to these rights.

C. *Implications of COVID-19 for residency*

Even before COVID-19 spread across Europe, there were many categories of EU and UK nationals whose post-Brexit residency was potentially precarious. The pandemic has added two complicating factors: some people may no longer meet the conditions of the European Union’s Free Movement Directive, and some will find that their applications (such as for

residency, family reunification, and citizenship) are delayed due to lockdown measures, which have had direct effects on registration processing and indirect effects on individuals’ ability to obtain the documents they need to prove their status.

Previously tolerated irregularity may become grounds for denial of a post-Brexit status under the withdrawal agreement.

According to the Free Movement Directive, which is the basis for maintaining residence rights under the withdrawal agreement, EU citizens and their family members can enjoy free movement and residence for periods of longer than three months on the condition that they are either employed or self-employed, students, or other non-economically active persons with sufficient resources to support themselves and their families and comprehensive sickness insurance coverage.²³ But it is still unclear how strictly governments check whether the directive’s conditions for residence are met. Certain countries, such as the Netherlands and Sweden, already have a reputation for strict enforcement, at least at the start of residency, even if subsequent checks are not made to ensure continued compliance.²⁴ But even in countries with a historically generous approach towards EU nationals, such as France,²⁵ which does not have a mandatory registration system for EU citizens, previously tolerated irregularity may become grounds for denial of a post-Brexit status under the withdrawal agreement.²⁶

In a non-representative survey of UK nationals in France, carried out in May–June 2020, one-quarter of respondents who reported feeling anxious about the registration process were concerned about not meeting the conditions for legal residence (e.g., due to having small incomes), not being able to prove they are self-sufficient, being unemployed, or re-

ceiving income support benefits from the French government.²⁷ In the Netherlands, self-employed UK nationals have also reported fearing that a low reported income on their 2020 tax returns might call into question whether their work meets the ‘genuine and effective’ requirements, potentially negatively affecting their applications for post-Brexit status.²⁸ But fear of claiming benefits needed to sustain livelihoods in times of economic and health crises, or inability to do so, could result in additional personal hardships.

EU and UK citizens looking to acquire permanent residence or to naturalise in their country of residence may also worry about exceeding the allowed annual and cumulative periods of absence if they have had to spend long and unanticipated periods of time abroad due to COVID-19-related travel restrictions. With the uptake in remote working, some workers may have relocated closer to family members, only to become trapped by limits on non-essential travel and airport closures. There are also reports of residents caught overseas and turned away as ineligible for repatriation flights because they were not citizens.²⁹ The lockdowns may also pose challenges to future residents—in other words, people who planned to either reunite with family members or to move to the United Kingdom or an EU country before the end of the transition period but were unable to do so. In some cases, third-country-national family members have been stuck in precarious situations overseas while they wait, either due to the health crisis or political unrest, exacerbating family hardship and separation issues.³⁰

D. *Specific categories at risk*

EU and UK citizens of all stripes are at risk of contracting COVID-19 and being affected by its knock-on effects. And all groups face increased risks of worsening mental health, given the uncertainties associated with their legal status and livelihoods. But certain categories could find themselves partic-

ularly vulnerable at the intersection of Brexit and the pandemic’s health and economic fallout, with a wide spectrum of possible consequences that could result in unlawful residence or restricted access to various rights.

Hard-to-reach groups

Pervasive uncertainty about the actual number of EU citizens residing in the United Kingdom and of British nationals living in EU Member States, along with their non-EU family members, raises questions about what is and isn’t known about vulnerable individuals who may be exposed to the pandemic’s effects and struggle to demonstrate their status. Civil-society organisations point to several groups that could be especially vulnerable, such as those with long-term medical conditions, who are at significant risk of developing life-threatening complications if infected with the coronavirus and who must self-isolate; grandparents caring for their grandchildren but who have never worked in the receiving country and do not speak its language; individuals who do not possess a valid ID and for whom the acquisition of one is further delayed by significant administrative backlogs; and those who do not possess the necessary residency attestation documents despite living in the country. This last group includes individuals who provide unpaid care to relatives, those who are not listed on lease agreements for rented property and do not have utility bills in their name, and rough sleepers who have no (proof of) address.³¹ Individuals working in remote areas (e.g., on farms), those who lack exposure to information about the registration schemes and their deadlines, and those with limited digital literacy and access also face greater risks and can be difficult to reach in the absence of outreach measures specifically targeting them.

Non-EU family members

Europeans’ family members who are not themselves EU citizens already experience excessive delays in visa and residence card applications and unjustified

refusals.³² With public administrations operating at reduced capacity due to the pandemic, these issues are likely to continue. Additionally, after the transition period, families with UK and third-country-national members who are unable to support themselves in the EU-27 and want to return home will no longer be exempt from the United Kingdom's family reunification income threshold (currently set at GBP 18,600).³³ Coupled with potential job losses caused by a COVID-19-induced recession, this may leave some families in a particularly difficult situation.

Pensioners and older people

Older residents of Europe, and especially those with pre-existing health conditions or who need constant care, are at greater risk during the pandemic. While it is difficult to estimate the exact size of the problem, it is likely that pensioners rank highly among those who are under-registered in their countries of residence, which could make it difficult to prove residency and entitlement to a post-Brexit status.³⁴ Unlike people who are economically active, pensioners have fewer incentives to register, such as to receive social security contributions. Where registering could lead to a gap in health-care coverage, such as for early retirees who become ineligible for treatment under the United Kingdom's National Health Service but are not yet eligible for S1 health coverage provided to state pensioners³⁵ in their countries of residence, fear of coronavirus-related illnesses might make this population even more reticent to register outside of the United Kingdom. Among elderly Britons who have been living in a country for a long period, but have not acquired citizenship, some reportedly believe they do not need to apply for a new status under the withdrawal agreement, for example when they already hold permanent residence.³⁶

Seasonal and frontier workers

To qualify as frontier workers, employed or self-employed persons are expected to cross borders

between the country where they work and the one in which they reside at least once per week.³⁷ Lockdowns could prevent people from working or running a business across countries, as well as force workers to choose between staying in their country of employment or residence; this could lead to difficulties when trying to prove eligibility for frontier worker status under the withdrawal agreement. People who usually rely on seasonal occupations, such as in the tourism industry, may face particular hardships at the intersection of Brexit and COVID-19. Spending only a portion of the year in a country, seasonal workers are already at a disadvantage when it comes to proving their continuous legal residence there. And with tourism industries across Europe taking a hit,³⁸ seasonal workers may be unable to support themselves in their host countries, especially if their short residency does not qualify them for government stimulus payments.

Long-distance families and unmarried partners

Having family members trapped in different countries during the lockdown risks adding additional mental and financial stress. And the withdrawal agreement does not address the challenges many couples already face in exercising family reunification. For example, for unmarried couples, family migration is only allowed for those who were in a 'durable' relationship before the end of transition period. But this tends to particularly disadvantage same-sex couples in registered or civil partnerships, as well as all couples in unregistered partnerships. Member States set their own threshold for what counts as a 'durable' relationship, and definitions can include evidence of living together (France and Sweden³⁹) or meeting a certain number of times in the past two years (Belgium⁴⁰). The pandemic may have negative consequences in both of these cases if couples were unable to travel or meet, or if plans to register or marry were disrupted. This may be especially true for same-sex couples living in one of the 14 Mem-

ber States that do not allow same-sex marriages,⁴¹ or one of the six Member States that do not allow same-sex registered or civil partnerships.⁴²

Children

School closures in the countries hardest hit by the coronavirus have left more children vulnerable, in particular those whose families have limited economic means to enable them to participate in online education courses and where parents have had to reduce their working hours (and thus their income) as a result of care responsibilities. Some children are also more at risk of hunger as a result of school closures, particularly those dependent on free school meals. In the United Kingdom, food banks have seen huge increases in the number of families accessing their services, many with children who would have normally been part of school or afterschool meal schemes. The United Kingdom's largest food-bank network saw an average increase of 59 per cent in food aid between February and March 2020, compared to a 3 per cent increase during the same period in 2019.⁴³

Some caretakers may wrongly assume that their child does not need to apply, for instance, if the child was born in the country of residence.

About 57 per cent of all the British children in the EU-27 live in Spain or France.⁴⁴ But in some other countries, they make up large shares of resident UK nationals; in Lithuania and Slovakia, for example, nearly 40 per cent of British residents are children.⁴⁵ Children whose parents have exercised their right to free movement are entitled to residence rights under the withdrawal agreement. However, children are also dependent on their guardians to acquire post-Brexit status on their behalf. Some caretakers may wrongly assume that their child does not need to apply, for instance, if the child was born in the

country of residence. In countries that require an application to transition to a post-Brexit status (as opposed to countries where status is granted automatically based on current eligibility), failure to apply by the cut-off date could result in trouble down the line for children who later try to claim their rights under the withdrawal agreement.

The pandemic adds another level of strain. If a subsequent wave of infections leads to a new set of lockdown measures in late 2020 or 2021, children in separated families may find themselves trapped with one parent outside of their usual country of residence and miss the application deadline. Children in foster care are also at risk of not having their applications submitted or their status confirmed before the deadline, which raises significant risks for their status in countries opting for application-based schemes.⁴⁶

Students

With many institutions moving their classes online until the end of 2020, students who returned home may find themselves skirting the limits of habitual residence tests in the country where they usually study. And recent or soon-to-be graduates looking to work in their country of residence could become 'generation lockdown',⁴⁷ with weaker employment prospects that could limit their options and send them home more quickly if they cannot meet income requirements. In the United Kingdom, the government published explicit guidance on whether periods of absence due to the pandemic would count against students who were still enrolled, and outlined relaxed requirements for institutions to monitor students' attendance in class.⁴⁸ The graduate route announced in September 2019,⁴⁹ which will allow students who graduate after Summer 2021 to stay in the United Kingdom for two years to work or look for work, will also offer concessions to students who had to spend some time studying outside the country due to COVID-19.⁵⁰ There are few similar of-

fers for UK nationals in the EU-26. The Netherlands⁵¹ and Germany⁵² offer jobseekers' visas to recent graduates, but only for one year and six months, respectively, and neither country has offered similar concessions for COVID-19-related absences.

3 Implementing the Withdrawal Agreement: Emerging trends

Against this backdrop of heightened vulnerabilities and uncertainty, the withdrawal agreement is slated to come into effect on 1 January 2021, with an additional grace period until at least 30 June 2021 for citizens to register for post-Brexit status. But while the impact of the COVID-19 pandemic on residents of countries across Europe is clear and far-reaching, the impact on governments' post-Brexit planning is more mixed. Where implementation of the citizens' rights portion of the withdrawal agreement had begun, the pandemic has had clear consequences, leading to interruptions of some or all processing. In addition, the pandemic has put public administrations under added strain and reduced or halted in-person visits to agencies responsible for receiving and processing residence applications.

The effects on the registration of UK and EU nationals vary across countries, depending on how much progress had been made in setting up registration processes before the pandemic hit and the extent to which such processes rely on online or offline measures. As communications about the registration process and timeline have been delayed, the pandemic has also had serious effects on would-be applicants' awareness and understanding of the various requirements, the support available as they navigate them, and the deadlines between now and the end of the transition period.

The subsections that follow highlight six trends that have become visible so far.

A. *Almost an even split between declaratory and constitutive systems*

With only a few months left till the end of the transition period, governments have only recently announced which style of registration system they will use, but concrete details about procedures are often limited and implementation lags behind. This increases the pressure on governments to communicate whatever new procedures are decided effectively—and in a short time. In the meantime, it leaves individuals and their families in the potentially stressful position of not knowing what to expect or how to prepare. Regardless of the type of residency registration scheme, it is important that countries work to minimise the number of people who will be left behind and without a status when registration processes end. But even seemingly generous registration systems can leave some residents exposed.

There are two broad options for establishing the residence rights of EU and UK nationals and their family members under the withdrawal agreement. The 'constitutive' option is a mandatory registration scheme. Individuals must apply for either temporary or permanent residence status, depending on their length of stay in the country, and will be issued corresponding documentation.⁵³ Failure to apply before the imposed deadline will result in the loss of lawful residence. Under the alternative 'declaratory' scheme, residents who satisfy the conditions of the European Union's Free Movement Directive⁵⁴ before the end of the transition period are automatically entitled to a post-Brexit status and corresponding documentation without having to apply.

In theory, the key difference between constitutive and declaratory systems is that in the latter type,

individuals do not become irregular residents if they fail to apply by the given deadline.⁵⁵ In practice, the distinction between declaratory and constitutive systems is blurry, and some states may still require potentially onerous registration processes. For instance, according to the draft law in Germany, UK nationals who are lawfully resident as of 31 December 2020 and are entitled to rights under the withdrawal agreement will be required to register with the local foreigners' authority by 30 June 2021 to receive new residence documents under the withdrawal agreement. However, those who already have a residence or permanent residence card in accordance with EU law do not need to register again after 31 December 2020, though they will need to provide photographs, signatures, and fingerprints for the new residence document that will be issued in line with EU guidelines. Some other declaratory systems do not have deadlines, instead allowing residents to obtain a new status document when their current status expires, as is the case in Spain,⁵⁶ or to replace their existing documents, as in Cyprus.⁵⁷

In practice, the distinction between declaratory and constitutive systems is blurry.

An official list clarifying which Member States will adopt constitutive registration schemes and which will opt for declaratory systems has only recently been published. It confirms previous indications that 13 countries have opted for a constitutive system (including France, Malta, the Netherlands, and Sweden), similar to the United Kingdom's settled status, and 14 have chosen a declaratory system (such as Cyprus, Germany, Italy, and Spain).⁵⁸ At the time of writing, in some countries, legislation is still pending (e.g., Finland, Germany, Poland, Sweden). UK citizens and their family members living in countries that have not yet published their decision or have just recently done so are at a disadvantage in terms of the added stress and anxiety of not knowing what

to expect, how to prepare, and on what timeline. This may become even more acute where Britons are eventually confronted with the stricter deadlines of a constitutive system, compared to those of a declaratory one. At the same time, Member States have very limited time in which to turn the public's attention back to Brexit and ensure individuals and families receive and act on the correct information once it is available.

Notably, while individuals in constitutive systems may face swifter consequences for failing to meet the requirements of the European Union's Free Movement Directive, there are also potentially severe consequences for individuals in declaratory systems who cannot prove their status. It could, for example, make it more difficult to access rights that require an individual to furnish proof of status, such as working and buying or renting property. Public authorities may also struggle to distinguish individuals with rights under the withdrawal agreement from those without, leading to delays and confusion at border crossings (especially where mobility may be already restricted by coronavirus-related lockdowns). Some consequences may only become visible later, such as when individuals seek to access social security or social assistance benefits, open a bank account, access a health-care system, or obtain or change a driving license.

B. Implementation is the exception, not the rule

Implementation of the citizens' rights portion of the withdrawal agreement is already in advanced stages in the United Kingdom,⁵⁹ which started to implement the EU Settlement Scheme in early 2019 (with the process scheduled to end on 30 June 2021).⁶⁰ By contrast, implementation in EU-26 Member States is delayed or incomplete, with only a minority of countries having drafted, passed, or started to implement relevant legislation.⁶¹ This raises the question of

whether states have enough time to kick their operations into gear—especially against the backdrop of potential future pandemic-related lockdowns and backlogs.

Within the EU-26, only Italy,⁶² Malta,⁶³ and the Netherlands⁶⁴ had begun implementing the citizens' rights portion of the withdrawal agreement before lockdowns began in Spring 2020. The registration process in Luxembourg began on 1 July 2020.⁶⁵ Other governments have also drafted legislation or guidelines that have already come into effect (e.g., Cyprus and Estonia) or are planning to do so before the end of the year (e.g., France, Germany, and Sweden). And while some Member States have published information relevant to the status of UK nationals in their host countries throughout the transition period and onward, several websites still include information dating back to the period before the withdrawal agreement was ratified or have only been minimally updated since. But even where information is presented on the expected process and requirements, it is not always comprehensive. In cases where the registration timeline is mentioned, there are seldom clarifications about the consequences of not filing applications on time. For instance, in Belgium the information available online is listed as provisional.⁶⁶

Several websites still include information dating back to the period before the withdrawal agreement was ratified or have only been minimally updated since.

The seeds of these delays predate the pandemic. But the extent of the disruptions to legal institutions and economic activities in Europe produced by the pandemic are likely to have affected the capacity of governments at all levels to follow the implementation roadmap, albeit to different degrees. One place where the pandemic has clearly upended the

implementation timeline is France, which has a constitutive system and is the EU-26 country with the second-largest population of UK nationals,⁶⁷ after Spain. The French online registration platform was due to become operational on 1 July 2020, but this has been postponed until 1 October.⁶⁸ Concerns have been raised about the impact of this delay on the feasibility of completing the process in only nine months, and given the existing three months' backlog in processing requests for residence permits for third-country nationals in France.⁶⁹ Existing backlogs across the European Union could mount up (also in view of the sizeable population of third-country nationals in some areas, who use the same public services to register or renew residency) and cause further delays, in particular in an environment where lockdown measures continue to lengthen standard processing times.

In the countries where progress has been made, the next months will be a test for how registration systems perform, and whether public administrations have the necessary capacity to process applications in a timely manner and enable quick and effective appeal or redress procedures. But at this stage, governments can already work to ensure that the situation on the ground is monitored in great detail, that institutional communication and feedback mechanisms are built into the setup of implementation systems, and that all relevant actors at the national and local levels are coordinating in real time.

C. Registration windows are narrow and it is unclear what will happen if you miss them

The COVID-19 pandemic has exacerbated pressures on registration systems, but only two countries have announced plans to extend the grace period for nationals to register. Backlogs look set to grow over the coming months, with significant ramifications for individuals' access to benefits, services, and employ-

ment. But across the board, including in the United Kingdom, there is a dearth of information on how appeals processes will be implemented within these tight windows and what recourse there will be for late applications.

While 30 June 2021 is the end of the grace period to apply for registration, as set by the withdrawal agreement, countries can decide to extend the registration deadline. Thus far, Sweden and Finland (both constitutive systems) have announced they are considering extensions until 30 September 2021, and in neither case was this explicitly tied to the pandemic.⁷⁰ Denmark, Romania, and Slovenia (also constitutive) have decided to extend the registration deadline until 31 December 2021.⁷¹ The narrower the registration window available to applicants, the more problematic it will be to process applications, address complex cases, and ensure individuals have enough time to collect the documents requested to prove their residence. Backlogs are thus likely, especially in countries where the population of would-be applicants is sizeable and where it is difficult to estimate how many people will need to register.

The consequences of these narrow application windows will differ in constitutive and declaratory systems. Imposing strict deadlines for registration procedures, whatever the system type, has the advantage of creating incentives for individuals to apply and thus allow administrations to provide documents to attest their new post-Brexit status. This could be especially pertinent in declaratory systems, where it will be more difficult to strike the right balance between being reassuring and creating a sense of urgency. For example, in Cyprus the government has put out messages reassuring UK nationals that they will remain legally resident after Brexit under its declaratory system. But this gentle tone might also undermine efforts to encourage UK nationals to register. In this case, one civil-society organisation has stuck to promoting the benefits of registering, such as being able to be absent for five years without los-

ing status, rather than the risks.⁷² Meanwhile in constitutive systems, with their stricter consequences for missing the deadline, the absence of flexible approaches⁷³ that allow registration after the deadline could result in some individuals falling into irregular status overnight—and finding that they have lost entitlements and have limited or no access to public services—despite months or years of lawful residence and contributions to the country’s economic and social life and social security systems.

In the end, regardless of the differences between constitutive and declaratory schemes, obtaining proof of status under the withdrawal agreement is likely to prevent challenges down the road, even though it increases the short-term administrative burden.

D. Many registration systems will be localised, creating a ‘postcode lottery’

Whether registration is local or centralised has important implications for processing times and procedures, and individual support systems. Where this is done at the local level, rather than by a single national team dedicated to processing applications, training on how to operate the post-Brexit system will have to be rolled out to all municipalities across the country. Local officers may also impose additional documentary requests that slow down processing or lead to a regional discrepancy in requirements and decisions. This could result in confusion among applicants, which may in turn slow down applications. Or, in the worst-case scenario, it could lead to incorrect grants or loss of status.

Localised systems may also be more prone to discrepancies in terms of processing times and decisions, which may become apparent only later. They have already resulted in massive disparities in the experiences UK nationals have had under the

spectre of a no-deal Brexit. For example, some UK nationals in French municipalities reported having to queue for hours to apply for residence cards, and where booking systems existed, it was difficult to get a slot.⁷⁴

The United Kingdom, rather than administer the EU Settlement Scheme through local authorities, is operating the system centrally, through the Home Office.⁷⁵ Those few EU countries that have made information publicly available have chosen a diverse mix of centralised, localised, and hybrid approaches. For instance, Malta's identity management agency is responsible for reaching out to UK nationals with valid residence documents and inviting them to submit applications for a new residence document at one of two offices.⁷⁶ France, on the other hand, will take a hybrid approach. It plans to centrally collect applications through an online system, and then ferry them out to the relevant prefectures for processing. But given variations in the concentration of UK nationals across the country, some prefectures are likely to be oversubscribed while others will have a more manageable volume of applications. And no additional funding has been announced to support areas with a relatively heavy expected case load, which may itself be an underestimation given the uncertainty around the size of the eligible population.

At least one Member State has offered a possibly easier path for the most vulnerable applicants. In Cyprus, most UK nationals will have to apply to their local municipality if they want to get a post-Brexit document, but UK-government-funded civil-society organisations that are assisting vulnerable Britons (such as people with mental or physical conditions and those who are geographically isolated) will be able to submit multiple cases directly to the central government for processing.⁷⁷ Where these applicants also have complicated cases, this could help relieve pressure and prevent bottlenecks at the local level. It is unclear how many other Member States will allow civil-society organisations to submit ap-

plications on behalf of vulnerable applicants, under what conditions, and where these will be processed centrally rather than at the local level. It is also unclear what kind of monitoring will take place to track how consistently decisions are being applied and whether certain localities need more resources—or even a potential extension.

E. Deeper questions of how to prove immigration status in a digital world

Immigration and tourism between the United Kingdom and the European Union will continue after Brexit, though the exact terms are still subject to negotiation. But whereas citizenship has to date been a widely accepted proxy to prove residence rights, people who share the same nationality but who arrive before and after the end of the transition period (31 December 2020) will be in distinct categories. And over the years, post-transition-period arrivals may come to outnumber earlier arrivals with a post-Brexit status. Being able to distinguish those who hold a post-Brexit status, and to provide them with a durable form of evidence, has therefore become a critical issue. The Windrush scandal in the United Kingdom, where many legal residents of Caribbean origin were forced into precarious situations—some even deported or denied re-entry—because they lacked proof of their status, is often cited as a cautionary tale.⁷⁸

Whether or not to issue physical documents has been a central topic of the debate on citizens' rights and is the clearest point of divergence between the UK and EU approaches. In the United Kingdom, for instance, the EU Settlement Scheme does not provide a physical document that confirms the holder's status. Instead, successful applicants receive a letter confirming their settled or pre-settled status, but it cannot be used as official proof.⁷⁹ A unique access code (referred to as a 'share code') retrieved online is

instead considered proof of residence and allows individuals to prove their status (e.g., to employers or landlords) without fear of misplacing paperwork, or having it taken by someone. But this is likely to lead to a range of practical challenges for status holders, who may not be able to log in at critical moments (e.g., when crossing borders or attempting to access public services such as health care)⁸⁰ due to internet connectivity issues or system failures. Moreover, for those who have limited digital skills, the prospects of constantly having to access the UK government's platform to prove their status—and to keep their status up to date, such as after renewing or replacing a passport or changing a phone number or email address—may be daunting, as casework evidence shows.⁸¹ As this is the first immigrant category in the United Kingdom to rely exclusively on such a digital status, this new and unfamiliar system may also pose challenges for employers, landlords, and others with responsibility for checking proof of residency. This could create a chilling effect, resulting in systematic discrimination, where EU nationals are unfairly turned away from certain jobs or housing in favour of those with less burdensome documentation.

This is likely to lead to a range of practical challenges for status holders, who may not be able to log in at critical moments ... due to internet connectivity issues or system failures.

Unlike in the United Kingdom, and regardless of the registration system they will opt for, all Member States will have to issue a physical EU biometric residence card, in line with EU guidance.⁸² However, the biometric documents do not have to differentiate temporary from permanent residency, and this is expected to put those with permanent residence at a disadvantage, since these individuals are exempt from the stricter conditions associated with work, self-sufficiency, and proof of comprehensive health

insurance.⁸³ In practice, some Member States do intend to issue residence documents that specify whether the holder's residence is temporary or permanent (e.g., the Netherlands, Poland, and Sweden).⁸⁴ The Netherlands will also start issuing biometric residence documents that attest to the status of UK nationals who are frontier workers.⁸⁵

F. Online systems are more resilient in the pandemic but exacerbate some barriers

Lockdown measures have severely curtailed individuals' ability to register for post-Brexit status in person. Online systems may be better at weathering potential future waves of infection, but they can also leave vulnerable groups behind. In addition, EU governments do not have much choice but to conduct some amount of the process offline: the EU-wide requirement to give UK nationals biometric residence cards, for example, means offering in-person appointments to take fingerprints.

The United Kingdom's online application system for EU Settlement Status was able to carry on largely unabated by lockdown measures.⁸⁶ This mitigated some of the negative effects of the pandemic on EU citizens' residence applications, yet the overall pace still slowed for a period, as the EU Settlement Resolution Centre temporarily halted services, case workers were initially unable to work remotely, and phone support was reduced.⁸⁷ By May, however, all application routes and Home Office support services had fully reopened, though some third-party support remains unavailable.⁸⁸ In Malta (a constitutive system), the offline registration process kicked off before the onset of the pandemic, but was shortly thereafter halted.⁸⁹ In Italy (declaratory), the application process rests on in-person appointments at the local authority responsible for registration procedures.⁹⁰ And in the Netherlands (constitutive), while the online application process has continued

throughout the lockdown without significant issues, the issuance of biometric residence documents was affected;⁹¹ this was resolved over the summer.⁹²

Online registration systems can relieve the administrative burden created by the registration of sizeable populations, in particular where the application process is straightforward (e.g., does not require uploading documents). But although potentially well suited to a world where people spend increasing amounts of time at home, over-reliance on online registration and support systems remains a double-edged sword. While online systems can be more resilient during the pandemic, they can also lead to the exclusion of people with complex cases and limited digital skills, even as they work well for those who are digitally savvy and in possession of the required documentation. For example, even though the UK system is online, many people still rely on face-to-face support for vulnerable groups and those with limited digital access.⁹³ And while some have been able to continue submitting applications through the pandemic, this offline support is only slowly resuming.

Online-only systems have attracted criticism for creating barriers for those with limited digital literacy or access, while mixed systems have been vulnerable to COVID-19-related closures.

The registration systems implemented in the Member States (regardless of whether they are constitutive or declaratory) tend to combine online elements with hard-copy forms to be sent by post and in-person appointments as they seek to fulfil the requirements for the EU-wide biometric residence card. Hybrid registration processes have their own disadvantages, relative to online systems, and during crises

might pose a constraint on the operating capacity of administrative agencies and opportunities for individuals to access key services. In all countries where registration had begun before the pandemic (Italy, Malta, and the Netherlands), the parts of the process involving physical interactions were discontinued by the social-distancing rules governments imposed to reduce the spread of the virus.

Both approaches thus have limitations: online-only systems have attracted criticism for creating barriers for those with limited digital literacy or access, while mixed systems have been vulnerable to COVID-19-related closures.

4 Key Considerations for Ongoing Implementation

Brexit and the pandemic have shifted a number of sizeable, complex, and potentially life-altering risks onto EU nationals living in the United Kingdom and UK citizens in EU Member States. Ambiguous registration timelines, requirements to (at times retroactively) prove employment status, income, and comprehensive health insurance, coupled with heightened health and financial anxieties brought on by the pandemic—and the insecurities associated with the uncertain status of non-EU family members—all contribute to the risk of creating a newly marginalised group of residents within the United Kingdom and the EU-26. The manifold repercussions will be felt not only by individuals and their families, but societies in general. To avoid dramatic consequences for people's livelihoods and social cohesion, there are five strategic questions states would do well to consider as they attempt to mitigate these potential negative impacts.

A. *How should people be kept informed?*

The pandemic has exposed some of the shortcomings of traditional public communications in reaching potentially vulnerable communities, and particularly those with migrant backgrounds.⁹⁴ These communications challenges can be amplified by limited proficiency in host-country languages, lack of familiarity with the local media landscape, poor digital literacy and access, or physical incapacitation caused by poor health. Lockdowns also shuttered the traditional centrepieces of community life, such as schools, churches, community centres, and businesses, where information could circulate more informally and into communities beyond the reach of conventional communication channels. With the pandemic forcing many people—and especially the medically vulnerable—to retreat into their homes, smart outreach is even more essential.

As with COVID-19, Brexit is a ‘novel’ situation. Governments that take a proactive approach to explaining how application processes will work will help alleviate fears and uncertainty. For example, a survey of UK nationals in France found that those worried about Brexit would feel more comfortable if they had detailed guidance about what was going to happen.⁹⁵ And in communicating about COVID-19-related economic stimulus packages, governments could make it clear whether receipt of these economic benefits will hurt the standing of post-Brexit status applications. In France, for example, the British embassy conducted its own outreach to reassure UK nationals they could accept the one-off payment released to support workers and businesses under the French government’s financial aid package without negative repercussions.⁹⁶

Apart from those directly affected by the withdrawal agreement, governments should also consider how to raise awareness within the general population

of the changes stemming from Brexit and the withdrawal agreement. Misinformation may circulate regarding rights to work, rent accommodations, and access benefits and health care, which could have significant impacts on UK and EU citizens’ employment opportunities, housing and support options, and medical care. The Netherlands, for instance, is planning a general information campaign aimed at businesses, focusing on preparing them for operations and continued work with UK nationals after the end of the transition period.⁹⁷ Publicity campaigns in high-traffic areas, such as supermarkets and pharmacies, could help raise awareness among the public more broadly, even if lockdown measures are reintroduced.

B. *Who will provide information and support?*

Civil-society organisations can also play a major role in disseminating information and supporting applicants for post-Brexit status throughout the process. This human touch could be especially important for elderly and medically vulnerable persons, who may require assistance getting their documentation in order, and for people who lack digital skills and access. In the United Kingdom, the national government has funded 57 organisations to provide face-to-face, online, and telephone support to EU nationals applying for settled status.⁹⁸ The Scottish government has also made available a support package for EU citizens living in Scotland, including online and printed toolkits; media campaigns across radio, digital, and social platforms; and funding for advice and support services, briefing and outreach events, and fact sheets targeting and guiding employers in understanding the rights of EU citizens after Brexit.⁹⁹ Nothing on a similar scale has been attempted by the European Commission or EU-26 governments, though the UK government has made available the UK Nationals Support Fund and allocated GBP 3 million for a handful of civil-society organisations

on the continent to help UK nationals.¹⁰⁰ However, the funded organisations in the EU-26 provide only patchy coverage, limited to especially vulnerable target populations in specific areas of some countries.

Casework support and outreach have been massively hindered by COVID-19. Organisations have suspended face-to-face services and pivoted to supporting people over the phone or via social media, as well as sharing leaflets and putting adverts in local newspapers. While these approaches provide some measure of continued support, they may have only a minimal impact against the scale of the challenge, since they are unlikely to reach the most vulnerable (i.e., those who do not have access to phones, computers, or internet; who live in remote locations; or who need support that cannot be provided from a distance). For example, a civil-society organisation in Cyprus offering support to the most vulnerable UK nationals received 101 responses the day after it placed an advert in a local English-language newspaper.¹⁰¹ But only 21 responses were from people who met their vulnerability criteria. This suggests a gap in outreach to UK nationals with relatively less vulnerable profiles, though the organisation was able to point the other respondents towards relevant information even if it could not support them directly. And with the UK government scheme's funding for civil-society organisations set to expire in March 2021, there is a risk some vulnerable people will miss out on this support—and that those who don't meet the criteria won't get any help at all.

Organisations can support awareness-raising and outreach in particular in remote areas, where government outreach and digital communication channels might not extend.

In addition to outreach conducted to support UK or EU nationals in applying for their new residence status, civil-society organisations can also play a critical role in engaging with employers to inform them about the rights of their employees that come under the scope of the withdrawal agreement, as well as about their own responsibilities in taking necessary steps to prepare their structures and workforce for the post-Brexit period. Organisations can support awareness-raising and outreach in particular in remote areas, where government outreach and digital communication channels might not extend. For example, an organisation that operates in Scotland and supports applications to the EU Settlement Scheme plans to conduct outreach in rural areas upon the lifting of lockdown measures in order to provide information about the registration scheme to local employers, with the hope that their support will allow this information to cascade down to their employees as well.¹⁰²

C. How do we make the most of the limited time available?

With very limited time to get post-Brexit systems up and running, and many unknown variables, governments have to carefully prioritise how to maximise learning and preparation for an uncertain future. The United Kingdom has given EU nationals approximately 27 months to apply for settled status, having first started with a pilot programme in 2019. Many post-Brexit status processes in the EU-26 will not come into effect until the end of 2020 or beginning of 2021, leaving Member States limited time to learn from and address any glitches. Member States could therefore try to frontload their learning and use peer support to avoid common pitfalls. In preparation for a no-deal Brexit, for example, France announced it would pilot and then launch an online registration system for UK nationals.¹⁰³ However, it is unclear how many people applied under the now paused scheme, and it appears no residence cards were issued. The Netherlands, which started issuing

invitations for UK nationals to come and apply in February 2020, found that less than half of invitees applied within the stipulated four-week period. The country's Immigration Department planned to conduct focus groups to identify the reasons for this low response rate, but those were cancelled due to the COVID-19 lockdown.¹⁰⁴ States should consider other remote forms of social research, such as expert interviews and online and telephone surveys, to help plug this response gap if in-person meetings are not possible. But above all, they should use this limited time to prioritise contingency planning to be able to quickly adapt however the situation evolves.

D. How should governments determine whether an extension is needed?

A major consideration for states implementing constitutive systems is deciding whether the six-month grace period—till the end of June 2021—is long enough. In Sweden, where registration will only start in December 2020, lawmakers have already decided to extend the deadline by ten months from when the bill goes into force.¹⁰⁵ States should set benchmarks now for what conditions need to be met, and by when, in order for implementation to be considered successful. These contingency plans should also consider what the decision-making process will consist of if, for example, there is a second wave of lockdown measures. It will also be important to monitor how many people are trying to 'beat the ban' by exercising their free movement before the end of the transition period. If a state experiences a large increase in immigration before the end of the year, this could also trigger an extension.

To assist in this process, states could collect demographic and employment data on applicants, and compare this against the potential pool of applicants according to, for example, the Labour Force Survey micro-data. Concrete monitoring or other evidence on which profiles of UK and EU citizens

and their family members are applying (or are likely to apply) for registration can point to who might be under-represented. Such data can also help identify which industries most potential beneficiaries are employed in, and to what extent they have been adversely affected by the pandemic.¹⁰⁶ For example, while tourism and service industries have taken a hit, some other industries have transitioned to remote work with limited disruption. Assessing these risk factors could help inform states as they prepare contingency plans and determine whether (and how long) to extend the deadline for post-Brexit status registration beyond 30 June 2021.

E. How can governments offset uncertainties and miscalculations?

Measuring the success of any registration system is reliant on accurate estimates of the eligible population. As follows, one of the key challenges ahead for the United Kingdom and EU Member States is to assess the real number of citizens who should register, their profiles, and how to target outreach measures. In the United Kingdom, the EU Settlement Scheme has been operational since early 2019 and the latest statistics indicate that, as of 31 July 2020, the total number of applications received from EU nationals and their non-EU family members had exceeded 3.8 million.¹⁰⁷ With less than a year to go between that point and the end of the registration period, the numbers look encouraging. While it is estimated that there are approximately 3.7 million EU nationals currently living in the United Kingdom,¹⁰⁸ no accurate record exists. Similar uncertainties surround the number of non-EU family members of EU citizens, making it impossible to know how many have yet to register.

Reports in July 2020 signal a sudden increase in the number of applications for the Settlement Scheme being rejected on the grounds of eligibility (providing the requested proof of residence), which has

raised concerns about the reasons for refusal and the recourse available.¹⁰⁹ Many EU Member States face similar challenges, since registration as EU citizens under Free Movement Directive (Directive 2004/38/EC¹¹⁰) is not strictly enforced. Not knowing how many citizens are expected to register and their sociodemographic profiles reflects the core of the problem EU countries and the United Kingdom are facing: figuring out how to target awareness-raising and support efforts effectively when the potential number of (vulnerable) beneficiaries and their characteristics are unknown.

Other population statistics pose their own challenges, as they often do not capture fluctuations in population size and composition, and usually exclude those living in communal establishments (care homes, sheltered accommodation) and rough sleepers. Moreover, the size of the population that is eligible for residence rights under the withdrawal agreement extends beyond UK and EU nationals and could include an unknown number of their third-country-national family members or partners, including persons living elsewhere at the end of transition period who are eligible for family reunification under the withdrawal agreement.¹¹¹

States could reduce the potential damage to eligible UK and EU nationals and their families through 'second chance' measures.

Given the limitations in the data on the target population, it is unlikely that any of the registration schemes available will be completely error free. States could reduce the potential damage to eligible UK and EU nationals and their families through 'second chance' measures. In declaratory systems, the failure to register on time will not affect individuals' lawful residence in the country, but under constitutive systems missing the deadline is likely to have se-

rious consequences for people's livelihoods.¹¹² States applying constitutive schemes could thus consider flexible approaches to granting residence past the deadline to prevent the most vulnerable individuals from falling into irregularity. But governments should offer some guidelines on what situations will make an applicant eligible for this flexible approach. For example, the United Kingdom has indicated there will be scope for late applicants, but it is unclear who could access this service past the standard deadline.

5 Recommendations and Conclusion

The lifecycle of the pandemic is still unclear and unless countries make contingency plans for the end of 2020 and 2021, they jeopardise the timely registration of EU and UK nationals under the terms of the withdrawal agreement. With COVID-19 likely to persist for the foreseeable future, the planning and implementation of citizens' rights under the withdrawal agreement will need to identify workarounds that will work for individual applicants and their families. This includes careful consideration of how individuals who are not yet eligible for permanent residency and who find themselves in dire economic situations will be affected by social security regulations that limit access to public funds.

The benefits of a successful and inclusive implementation of the withdrawal agreement are, however, in no way limited to those directly affected by its terms. The broader societal and economic ramifications are wide-ranging, from ensuring the continuity of economic activities that rely heavily on EU and UK workers, to maintaining access to health care amid heightened need for such services, enabling families to continue to live together, and minimising the risk that administrative and judicial systems become flooded by appeals.

To ‘pandemic-proof’ citizens’ rights under the withdrawal agreement, policymakers on both sides of the Channel should consider:

- ▶ **Publicly announcing registration procedures.** With only months until the end of the transition period, governments should inform residents affected by Brexit about what kind of registration system they will be subject to and clarify the implications of not registering before the deadline (for residency status, but also for access to rights and services in the country). This should include detailed guidance on what kinds of documentary evidence may be required so that there is sufficient time to collect it. Where draft laws are available, they should be published, particularly where limited changes are expected between the draft and the text that will eventually be adopted.

Clearly date-stamping all published materials would help readers identify whether they are consulting the latest available information. In Cyprus, the Ministry of Interior published a useful 13-page explanation in English of how it would manage residence rights and residence documents for UK nationals after Brexit.¹¹³ Importantly, the document is clearly labelled with a date and version number. The Netherlands’ webpage ‘Living in the Netherlands after Brexit’ includes clickable shortcuts to particular points of information, as well as infographics, an animated video, and the details of an information hotline; it is hoped that the variety of the content will appeal to a diverse audience.¹¹⁴

- ▶ **Streamline procedures.** By all accounts, 2020 has been an exceptional year and no one can anticipate what lies ahead. This should be reflected in post-Brexit status systems’ requirements. For example,

governments should consider waiving traditional requirements to have documents translated or notarised to minimise costs for applicants and their potential exposure to the coronavirus. Governments should also consider waiving habitual residence tests, particularly for applicants who were trapped abroad by COVID-19-related travel restrictions. At the most fundamental level, evidence requirements should be kept to a minimum to reduce the potential burden on applicants. At the same time, people who meet post-Brexit residence requirements should also be automatically entitled to the other services guaranteed under the withdrawal agreement, including access to social security and health care.

- ▶ **Incorporate online and offline procedures.** Member States designing application systems now should consider how to incorporate digital and offline procedures and thus balance the diverse needs and abilities of UK nationals in the European Union and EU citizens in the United Kingdom. This way, a second wave of COVID-19 will not completely throw off implementation timelines, and people with limited digital literacy or access will not be excluded. This approach should extend to how decisions on application processes are communicated. Sending decisions by post and email can help ensure persons potentially trapped abroad in a lockdown are still informed. Sending notifications via phone messages may also increase the likelihood that people with limited access to digital devices and/or who are away from their homes are made aware that a decision has been made.
- ▶ **Invest in (joint) communications and outreach systems.** Outreach should also be adapted to the profile of beneficiaries. For

example, information should be provided in would-be applicants' native languages, and in print and digital formats (posted on a variety of social media channels) to ensure it is as accessible as possible. Online formats could make use of multimedia, such as websites, downloadable booklets, and videos to appeal to different audiences. States can learn from other countries' outreach programmes, or they could even join forces to co-create website and video templates that can be adapted to different national contexts, or to staff a joint helpline.

In countries with large numbers of children among the eligible population under the withdrawal agreement, targeted outreach through schools may help ensure that families have the information they need. Even where schools have been shuttered due to the pandemic, teachers could share information verbally with students over remote learning platforms, as well as emailing and mailing brochures to students' addresses. In countries with relatively large elderly populations, states could also consider outreach to care homes, hospitals, and remote areas where people may live in collective dwellings (e.g., on farms). Communications should also target the general population (employers, landlords, and foster-care providers in particular), as well as civil-service and frontline staff involved in providing services (e.g., medical facilities, health insurance funds or companies, job centres and social security agencies) to send clear messages about the post-Brexit status and rights of EU and UK nationals.

- ▶ **Expand and extend support for UK nationals in the EU-26.** While the UK government's efforts to fund seven civil-

society organisations in the EU-26 are laudable, these are very limited both in terms of which profiles of applicants they can support and where they operate. For EU-26 governments serious about sending a message of welcome to their UK residents, investment in support structures during this tumultuous period could go a long way. Lessons from the United Kingdom can be used to inform the development of such practices in the EU-26, for instance to ensure that alongside funding, adequate training about citizens' rights provisions in the withdrawal agreement and national immigration and social security legislation is made available to the staff who provide support and advice.

- ▶ **Invest in monitoring and feedback loops—as soon as possible.** EU Member States should consider creating an advisory committee that can give insider feedback on plans, guidance for frontline staff, application templates, and more, and raise concerns where appropriate, as well as recommend potential solutions and action plans. The United Kingdom has already created an advisory forum, scheduled to meet every two months, with representatives from five nongovernmental organisations working on citizens' rights.¹¹⁵ In EU-26 countries, such a consultative body could be made up of stakeholders within the local British community, such as the British embassy or chamber of commerce, and British in Europe and other civil-society organisations working with vulnerable groups, such as the elderly, children, and rough sleepers. This group could also participate in monitoring the implementation of the scheme, getting feedback from applicants on their experience and channelling this to policy designers.

Building in the right communication and feedback mechanisms from the onset of residency registration schemes will go a long way in ensuring that all relevant actors are engaged, working towards a common purpose, and have the opportunities and incentives to exchange information and learning in real time. It is important that governments recognise and address challenges before they snowball into systemic malfunctions. Parallel internal monitoring should be undertaken by implementing authorities to systematically track registration system capacity and performance. Tracking developments at the local level is particularly critical, as in decentralised systems there is a large margin of local discretion in how strictly or loosely requirements are upheld. These outputs should in turn be tied to benchmarks that inform when registration systems should be extended and for how long.

- ▶ **Give citizens a physical document attesting their rights.** Although it is not required under the European Commission's guidance on the biometric residence documents, Member States should clearly mark whether UK nationals are entitled to permanent or temporary residency under the withdrawal agreement. Permanent residence is accompanied by a more generous set of rights, but without clear documentation applicants could struggle to prove their eligibility for it. EU-26 nationals in the United Kingdom should also be eligible for physical proof of their status, which can coexist with the secure online platform. No other immigrant categories in the United Kingdom rely exclusively on a digital status. Not only does this reliance potentially disadvantage EU nationals who are less digitally literate or who change their phone number or ID document without remembering to inform the Home

Office, but it is also an unfamiliar system for employers, landlords, and others with responsibility for checking proof of residency. Without investigating first whether this type of digital-only status will curtail the rights of EU-26 citizens (e.g., due to discrimination in the housing market), there should be an option to request a physical card, in parallel with the online proof.

- ▶ **Consider and prepare for the post-registration period.** While the key objective is to enable an effective registration of UK and EU nationals under the terms of the withdrawal agreement, obtaining new residency status is not the end of the road. Brexit represents a life-altering change, with implications for individuals' freedom of movement, access to rights and services, family relations, and employment and educational opportunities and more. Governments and civil society will need to continue to monitor the situation on the ground in the months and years following 30 June 2021, to understand the effects of the change in status on individuals' lives and their ability to access rights as stipulated under the withdrawal agreement. Concerns about the limited access to social security provisions that EU citizens with pre-settled status in the United Kingdom may have raise questions about the possible risks of holding temporary residency, in particular in times of dual health and economic crises, when people's livelihoods might depend on the social protection measures they can access. This example is only one of many, which cannot yet be predicted or fully comprehended—but ensuring that citizens' rights are guaranteed in legislation and respected in practice will be a critical task for the UK and EU-26 governments.

This year has seen two of the most significant events of a generation collide—the United Kingdom’s departure from the European Union and a deadly pandemic. While these events are affecting millions of lives across Europe, there are a number of steps states can take now to prevent EU nationals in the

United Kingdom and UK nationals in the EU-26 from falling through the cracks. With the end of the transition period approaching, without a trade deal in sight, and under threat of a potential second wave of COVID-19 outbreaks, there is no time to waste.

There are a number of steps states can take now to prevent EU nationals in the United Kingdom and UK nationals in the EU-26 from falling through the cracks.

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