



Brexit Readiness: treating UK nationals at the external Schengen borders and related issues

Virtual meeting – 12 October 2020

Outline of the discussion topics

- Treatment of UK nationals at the Schengen external borders
 - Border checks
 - Visas
 - EES - ETIAS
- Related issues such as residence documents, permits and future mobility
- Specific issues for beneficiaries of the Withdrawal Agreement (WA)
- Addressing operational challenges with EU funding

Starting point

- 31 December 2020 at 23h59 Central European Time → Transition period ends
- As of 1 January 2021 at 00h00 Central European Time → UK nationals are treated as third country nationals
- UK nationals are no longer “persons enjoying the rights of free movement under Union law”
- The Schengen rules apply at the external border and most are directly applicable.

Treatment of UK nationals at the Schengen external Borders (1)

Border checks

- UK nationals will be subject to entry conditions of Article 6 SBC – for Withdrawal Agreement (WA) beneficiaries, residence document will replace the verification of the intention to stay and having sufficient means of subsistence
- Thorough checks upon entry and exit including against national and EU databases (Article 8 par 3 SBC)
- Stamping of passports upon entry and exit (Article 11 SBC) (not applicable to documented Withdrawal Agreement beneficiaries)
- “ALL PASSPORTS” or “VISA NOT REQUIRED” lanes (also for WA beneficiaries)

No room for derogations when it comes to border checks on third country nationals

MS to deploy the **necessary human resources** at their Border Crossing Points or to **adapt the infrastructure**

Treatment of UK nationals at the Schengen external Borders (2)

E-gates (ABC gates)?

- **No** – EU law currently reserves use of e-gates to holders of EU/EEA/CH passports
- But individual MS may authorise the use of e-gates upon **exit** only and under **three (3) cumulative conditions**:
 - (a) the MS has a national entry-exit system
 - (b) the third country national has entered the Schengen Area through a border crossing point of the same MS,
 - (c) the passport is stamped

Treatment of UK nationals at the Schengen external Borders (3)

Short stay visas

- UK nationals will be visa-free for short stays (up to 90 days within 180 days)
- Visa exemption is provided by Regulation (EU) 2019/592, which will become applicable at the end of the transition period
- MS have been requested to notify if they will exempt from the visa requirement:
 - schools pupils residing in the UK who are nationals of a visa-required country;
 - recognised refugees and stateless persons residing in the UK.

and if they will require visas for:

- UK nationals carrying out a paid activity during their stays;
- UK holders of diplomatic, service/official or special passports.

Treatment of UK nationals at the Schengen external Borders (4)

Airport Transit Visas

- A UK visa, a UK residence permit or residence card will no longer exempt persons from the requirement to hold an Airport Transit Visa (ATV) when passing through airports situated on the territory of Schengen Member States
 - Example: Nigerian national residing in the UK travels London-Frankfurt-Lagos. As of 1 January 2021, an ATV will be required, issued by the German consular authorities in the UK
- Residence cards issued by the UK under the EU Settlement Scheme to family members of EU citizens residing in the UK do not have visa exempting effect.

Treatment of UK nationals at the Schengen external Borders (5)

Entry Exit System (EES) and European Travel Authorisation and Information System (ETIAS)

- UK nationals will be subject to the EES and ETIAS, when these systems are deployed (first and second half of 2022 respectively)
- EES – will make use of e-gates possible and will do away with the need to stamp passports
- ETIAS - will speed up the processing of passengers
- WA beneficiaries will be exempt from the EES and ETIAS, as they have the right to reside in their host MS going beyond 90 days within 180 days

Related issues such as residence documents, permits and future mobility (1)

For beneficiaries of the Withdrawal Agreement

- Documents under Articles 18(1) or 18(4) WA depending on the system chosen by the Member State (constitutive or declaratory)
- Format of the document according to Commission Implementing Decision C(2020) 1114

For UK nationals who come to the EU to live, work or study **after 01/01/2021**

- Residence permits according EU or national law
- Uniform format of Council Regulation (EC) No 1030/2002 as amended

Related issues such as residence documents, permits and future mobility (2)

Long-term residence after 5 years subject to the conditions of Directive 2003/109/EC

Short-term mobility within the Schengen area (up to 90 days in a 180 day period, no right to work)

Onward mobility to live, work and study → **national or EU migration law**

Specific issues for beneficiaries of the Withdrawal Agreement (1)

Passport should **not be stamped if proof** is shown that UK national is beneficiary of the WA

- Residence document under the WA,
- For MS with constitutive WA implementation schemes: Certificate of application for the new WA residence status,
- Alternative evidence where the above two documents are not available, such as residence document under the previous free movement regime (Directive 2004/38/EC)

If doubt → passport **should be** stamped

Not subject to EES or ETIAS

- For third country family members the new WA residence document has visa exempting effect in other Schengen Member States (Schengen rules)

Specific issues for beneficiaries of the Withdrawal Agreement (2)

UK national does not hold a new residence document and resides in a MS with a **constitutive scheme**:

- Holds a **certificate of application** for new residence status: **no stamping**
- Does not hold a certificate of application but is **still within the DDL** to apply for a new residence status and there is **evidence that s/he exercised free movement rights** in the host MS before the end of the transition period : **no stamping**
- Does not hold a certificate of application, is still within the DDL to apply for a new residence status but there is no evidence that s/he exercised free movement rights before the end of the transition period: **stamping (case of doubt)**
- **After the application DDL, UK national needs to hold either the new residence document or a certificate of application. If not, the passport is to be stamped.**

Specific issues for beneficiaries of the Withdrawal Agreement (3)

UK national does not hold a new residence document and resides in a MS with a **declaratory scheme**:

- **Evidence** available that s/he **exercised free movement rights** in the host MS before the end of the transition period: **no stamping**
- No evidence available that s/he exercised free movement rights in the host MS before the end of the transition period : **stamping (case of doubt)**

N.B.: WA beneficiaries in host MS with a declaratory scheme have the right but no obligation to hold a new residence document issued under the WA.

Documents issued under EU free movement law and their consequences after the end of the transition period (1)

- EU free movement law will cease to apply to UK nationals and their family members on 31 December 2020
- Residence certificates, permanent residence documents and residence cards issued under Directive 2004/38/EC before the end of the transition period will therefore lose their legal basis.
- MS can neither issue such documents after the end of the transition period, nor can they extend their validity.

Documents issued under EU free movement law and their consequences after the end of the transition period (2)

- Where the validity of such documents expires after the end of the transition period, such documents – where issued by a Schengen MS – should be accepted as proof that the holder has a right of residence in a Schengen State, on the basis of which
 - s/he may travel in the Schengen area
 - will be exempt from a visa obligation when entering the Schengen area
- In **constitutive systems**: until the end of the application DDL (grace period) set by the respective Member State / after the end of the DDL + certificate of application.
- In **declaratory systems**: until the document's end date of validity (provided not declared invalid and collected by issuing Schengen State).

Addressing challenges with EU funding

- Change of status of UK nationals at the end of the transition period → foreseeable issue
- Not eligible for emergency assistance funding (EMAS)
- MS can use funds allocated under the Internal Security Fund – Borders strand (ISF-B) until 2022 to upgrade national capacities at the border crossing points regarding infrastructure and staff
- MS can use Asylum Migration and Integration Fund (AMIF) for processing residence documents or upgrading capacities provided they have not committed all resources

Conclusion

- Status of UK nationals will change
- Minor disruptions can be kept to the minimum/ overcome swiftly
- Member States to ensure deployment of necessary human resources and appropriate adaptation of infrastructure (e.g. changing lane designation)

Background and reference information (1)

- Brexit Preparedness Notice on travelling between the EU and the United Kingdom following withdrawal of the United Kingdom from the EU, published on 22 November 2019
[https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#travel](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-<u>notices_en#travel</u>) [“Readiness” update to be published soon]
- Regulation (EU) 2019/592 of the European Parliament and of the Council of 10 April 2019 amending Regulation (EU) 2018/1806 listing the third countries whose nationals must be in possession of visas when crossing the external borders and those whose nationals are exempt from that requirement, as regards the withdrawal of the United Kingdom from the Union

Background and reference information (2)

- Commission Guidance Note on Part two of the Withdrawal Agreement Citizens' rights C(2020)2939
- Table on Withdrawal Agreement implementation in the MS (choice of scheme and DDLs)
https://ec.europa.eu/info/sites/info/files/brexit_files/info_site/overview_ms_residence_rights.pdf
- Brexit Contingency Communications COM(2018) 880 final and COM(2019) 195 final

Residence rights of UK nationals and their family members under the Citizens' Rights part of the Withdrawal Agreement - overview of implementation

EU Member State	Choice of the residence system under the Withdrawal Agreement - constitutive (Article 18(1)) or declaratory (Article 18(4)) *	Since when UK nationals and their family members can apply for a new residence document* (dates in future can change)	By when must those who are resident in a host State with a constitutive system before the end of transition apply for a new residence status under the Withdrawal Agreement?	Links to national information websites for UK nationals and their family members
Belgium	constitutive	under consideration	31/12/2021	https://dofi.ibz.be/sites/dvzoe/EN/Application_guides/Pages/Brexit.aspx
Bulgaria	declaratory	01/02/2020	-	https://www.mvr.bg/en/about-the-ministry/brexit/information-about-brexit
Czechia	declaratory	01/02/2020	-	https://www.brexitinfo.cz
Denmark	constitutive	01/01/2021	31-12-2021	https://www.mvcr.cz/mvcr/en/article/brexit.aspx https://nyidanmark.dk/en-GB
Germany	declaratory	15/11/2020	-	https://uim.dk/brexit/brexit-how-does-it-affect-you-as-a-british-citizen-living-in-denmark https://www.bmi.bund.de/SharedDocs/Kurzmitteilungen/EN/2020/01/brexit.html https://www.bmi.bund.de/SharedDocs/faqs/EN/topics/constitution/brexit/faqs-brexit.html
Estonia	declaratory	01/12/2020	-	https://brexit.mfa.ee/en
Ireland	declaratory	under consideration	-	https://vm.ee/en/what-do-you-need-know-regard-brexit https://www.siseministerium.ee/en/activities/citizenship-and-migration/united-kingdom-withdrew-european-union
Greece	declaratory	01/01/2021	-	http://www.justice.ie/en/JELR/Pages/Brexit https://www.dfa.ie/brexit
Spain	declaratory	06/07/2020	-	https://brexit.gov.gr http://www.inclusion.gob.es/es/brexit/residencia/index.htm https://www.lamoncloa.gob.es/brexit/preparacion2/Paginas/271218_residenciadetrabajo.aspx http://www.interior.gob.es/web/servicios-al-ciudadano/brexit
France	constitutive	15/10/2020	30/06/2021	https://brexit.gouv.fr/sites/brexit/accueil.html
Croatia	declaratory	01/01/2021	-	https://mup.gov.hr/vijesti/information-concerning-the-future-relations-between-the-united-kingdom-and-the-european-union/283273 https://www.esteri.it/mae/en/politica_estera/politica_europea/dossier/brexit.html
Italy	declaratory	01/02/2020	-	http://www.governo.it/B/approfondimento/diritto-dei-cittadini-caso-di-ratifica-dell'accordo-di-recesso-entro-8-31-gennaio http://www.governo.it/sites/new.governo.it/files/documenti/documenti/Notizie_allegati/governo/BREXIT/ANAGRAFE_vademecum_2020.pdf
Cyprus	declaratory	01/01/2021	-	https://brexit.com.cy/en/
Latvia	constitutive	01/10/2020	30-06-2021	https://www.pmlp.gov.lv/en/home/services/information-on-brexit.html
Lithuania	declaratory	01/01/2021	-	https://www.mfa.gov.lt/en/policy/european-union/brexit https://www.migracija.lt/Brexit
Luxembourg	constitutive	01/07/2020	30-06-2021	https://guichet.public.lu/fr/citoyens/brexit.html https://gouvernement.lu/fr/dossiers/2019/brexit.html
Hungary	constitutive	01/01/2021	under consideration	https://brexit.kormany.hu/en/
Malta	constitutive	17/02/2020	30-06-2021	http://www.bmbah.hu/index.php?option=com_k2&view=item&layout=item&id=1314&Itemid=1853&lang=en https://identitymalta.com/uk-nationals-residence-status-following-brexit https://www.gov.mt/mt/pages/FACTSHEET-Malta-Government-plans-in-case-of-a-no-deal-Brexit.aspx
The Netherlands	constitutive	01/02/2020	30-06-2021	https://ind.nl/en/Pages/Brexit-[UK-Withdrawal-Agreement].aspx https://zoek.officielebekendmakingen.nl/stcrt-2019-12710.html
Austria	constitutive	01/01/2021	31/12/2021	https://www.bundeskanzleramt.gv.at/themen/brexit.html https://www.bundeskanzleramt.gv.at/en/topics/brexit.html
Poland	declaratory	01/01/2021	-	https://udsc.gov.pl/en/cudzoziemcy/brexit
Portugal	declaratory	end November 2020	-	https://www.brexit.gov.pl/obywatele/konsekwencje-w-wybranych-aspektach/brits-in-poland https://migrante.sef.pt/brexit/
Romania	constitutive	01/12/2020	31-12-2021	http://igi.mai.gov.ro/content/brexit http://www.mae.ro/node/53172
Slovenia	constitutive	01/01/2021	31-12-2021	https://www.gov.si/en/registries/projects/brexit/
Slovakia	declaratory	01/02/2020	-	http://www.minv.sk/?brexit-2
Finland	constitutive	01/10/2020	30/09/2021	https://intermin.fi/en/consequences-of-brexit https://vnk.fi/en/information-about-brexit https://vnk.fi/en/information-about-brexit/contact-information https://migri.fi/en/brexit/en
Sweden	constitutive	01/12/2020	30/09/2021	https://www.government.se/press-releases/2020/05/brexit-supplementary-provisions-concerning-the-rights-of-uk-nationals https://www.government.se/articles/2020/05/right-of-uk-nationals-to-continue-living-and-working-in-sweden-under-the-withdrawal-agreement/ https://www.migrationsverket.se/English/About-the-Migration-Agency/Brexit.html

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* In declaratory schemes the new residence status will be had automatically if all conditions of the Withdrawal Agreement are fulfilled. In constitutive schemes the new residence status is granted upon application.