

Disenfranchised by Accident: the Brexit Initiative and Brits abroad

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On the 23rd of July 2018, the European Commission registered a European Citizens' Initiative called "Permanent European Union Citizenship", with the objective, in the context of Brexit, to ask the Commission to "propose means to avoid risk of collective loss of EU citizenship and rights, and assure all EU citizens that, once attained, such status is permanent and their rights acquired". The aim of this initiative is, for British citizens, to retain European Union citizenship post Brexit. However, paradoxically enough, a considerable number of British expats, who are the main concerned, are legally unable to support this initiative (or any other as it turns out) because of a legal conundrum.

The European Citizens' Initiative is a relatively new procedure of participative democracy originally created by the drafters of the Treaty Establishing a Constitution for Europe. It came into force with the Lisbon Treaty. Art. 11(4) TEU provides that "not less than one

million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties.”. The Regulation necessary to organise this procedure was adopted on 16 February 2011 and amended several times (see the consolidated version [here](#)). The whole process is digitalised, with a [dedicated EU official online register](#).

An important aspect of the procedure is the verification and certification of statements of support by EU citizens. According to Art. 8 of the Regulation, after collecting the necessary statements of support from signatories, the organisers shall submit them to the relevant competent national authorities. These national authorities must then, within three months, verify the statements of support submitted on the basis of appropriate checks, in accordance with national law and practice, as appropriate, and then deliver to the organisers a certificate certifying the number of valid statements of support for the Member State concerned.

The question is, which Member State is competent to verify which statement? Here, it gets complicated because two solutions are possible according to Art. 8. Some States only verify the statements of supports of persons holding a personal identification number or a personal identification document number. The others do not require such a number and verify the statements of support of persons residing on their territory and/or having their nationality. The detail is provided in Annex III, Part C. However, here, loopholes occur.

Among the Member States that do not require the provision of a personal identification number/personal identification document number, most agree to verify the statements of both the persons who reside on their territory and of their nationals residing abroad. However, two countries, the United Kingdom and Ireland, only verify the statements of their residents and not the statements of their nationals living abroad. Conversely, among the Member States that require the provision of a personal identification number or a personal identification document number, a certain number of them require a number contained in a document that can only be delivered to nationals. This is the case for France. [In the original version of the Regulation, back in 2011](#), France required documents accessible to foreigners, like residence permits and driving licences. However, in its current wording, the annex only mentions national identity cards and passports, only available to French nationals. Therefore, supports of statement by British nationals living in France can be verified neither by British authorities, because they do not reside in the UK, nor by French authorities, because they cannot get the documents which numbers are necessary to be verified by French authorities. The same applies to Irish citizens, and in all the countries that require a number contained in a document that can only be delivered to nationals.

In a way, it could make sense. The Member States of the Union have kept their sovereign power to decide who gets to vote under their legislation, and can for example disenfranchise citizens living abroad. It is however a rather shocking situation in terms of equality, since the actual possibility to support a European citizen initiative, which allegedly is a citizenship right, depends on the combination of their nationality and State of residence. It is true that the situation of British and Irish citizens living, for example, in France, is not different in this respect than the situation of the same citizens living in a third

country. However, these two situations cannot compare because, in one situation, the citizen resides outside of the territorial scope of the legislation that may be introduced following the initiative (and therefore could be said to be less concerned) whereas in the other case he/she resides within this territorial scope, and therefore possibly holds a stake in the matter. Obviously, this situation is all the more concerning when the initiative in question, as the one mentioned at the beginning of the present post, concerns most particularly British expats in other Member States.

This is a significant loophole that goes obviously beyond this initiative. The proposal of a new regulation for the European citizen initiative, issued by the Commission on the 13th September 2017, would fix this issue. Article 12(1) of this proposal states that “each Member State (the 'responsible Member State') shall verify and certify that the statements of support signed by its nationals comply with the provisions of this Regulation”. It is however very unlikely to be passed into law before Brexit Day.

There would be a lot to say about the merits of this initiative. Martijn van den Brink and Dimitry Kochenov, for example, have expressed a strong opposition to the idea, proposed by several commentators, including the European Parliament Brexit negotiator, Guy Verhofstadt, of an Associate EU Citizenship after Brexit – an idea that is very close to the prospect of “permanent citizenship” envisaged in the initiative. One could also argue that such an initiative goes beyond the legislative powers of the Union and, therefore, beyond the scope of the initiative. However, in any case, it is rather puzzling that some of the citizens most concerned by a registered initiative are deprived of the actual possibility to exercise their legal right to support it because of a legal loophole.

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