

THE STATUTE OF THE BRITISH CITIZENS ON THE TERRITORY OF ROMANIA IN THE CONTEXT OF BREXIT - UNION LEGISLATIVE AND TRANSPOSITION MECHANISMS

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ABSTRACT

On February 1, 2020 The Withdrawal Agreement¹ between the United Kingdom of Great Britain and Northern Ireland (generic-United Kingdom) and the European Union (EU) and the European Atomic Energy Community (Euratom), hereinafter referred to as the Union, has entered into force). This official document guarantees the two parties a withdrawal in conditions of legal certainty concerning areas such as the rights of British citizens and union nationals, the customs regime, trade and services, the rights of companies, etc. In a first analysis of the effects of Brexit, we mention the acquisition by the United Kingdom of the status of a third party with all the consequences that arise, such as withdrawal from the decision-making process, withdrawal of representatives from the Union institutional level. In order to support British citizens who continue to reside in the territory of the European Union but also to support Union nationals resident in the United Kingdom, in accordance with the Withdrawal Agreement, on the one hand, one continued to apply the European Union law to the United Kingdom on the entire transition period which lasted until 31 December 2020, while EU Member States were required to adopt national legal instruments governing both the transition period and beyond, the status of British citizens called "beneficiaries of Art. 50 TEUs who continued to live and work in the Union territory. Romania has fulfilled this obligation deriving from its status as a member state in the sense that on November 23, 2020, the Romanian executive adopted the Government Emergency Ordinance no. 204 of 23 November 2020 on the establishment of measures for the implementation of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, regarding the regulation of the right of entry and residence in Romania.

KEYWORDS: *Brexit, beneficiary of Article 50 TEU, British citizen, temporary residence, permanent residence.*

INTRODUCTION

I. Introductory considerations on the Pro-Brexit period of the United Kingdom

Brexit has its origins in the historical past of the United Kingdom's relations with the European Union², the successor to the European Economic Community. In order to understand this constant approach of the United Kingdom, we must understand the motivation behind it, which at least officially would consist of a repositioning in relation to the core of the six founding states of the EEC. Unofficially, we can note the "frustrations" of the United Kingdom over the two rejections of accession to the EEC in 1963 and 1967, motivated by the incompatibilities of an economic nature between the two parties. Even after joining the EEC

¹Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ L 29,31.1.2020.P.7) (hereinafter referred to as the Withdrawal Agreement)

²Vâlcu Elise Nicoleta, Boghirnea Iulia, "Jurisprudence and the juridical precedent of the European Court of law as source of law" Lex et Scintia International Journal, LESIJ

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in 1972, the United Kingdom failed to embrace its Union aspirations. As a result, two years after accession, in 1975, a referendum was held for Britain to leave the EEC, the result of the referendum was 67.2% in favor of belonging to the community space. Between 1994 and 1997, the rapid rise of the quickly dissolved but revived UKIP Referendum Party, a staunch supporter of Britain's secession from mainland Europe, is remembered. Thus, in February 2016, the British Prime Minister David Cameron launched June 23, 2016 as the date of the Brexit referendum. Following this process, 51.9% of voters decided that the United Kingdom should leave the European Union.

As a result of this vote, there have been key changes in the British political class: the resignation of Prime Minister David Cameron, the unconditional support of the Brexit population of Boris Johnson, given that his pro-Brexit position was in harmony with the vote of the population, the appointment of Theresa May, a member of the Conservative Party and anti-Brexit supporter, as chief executive.

On March 29, 2017, the United Kingdom of Great Britain and Northern Ireland, hereinafter referred to as the United Kingdom, invoked Article 50³ of the Lisbon Treaty⁴, initiating the process of withdrawal from the EU.

What was the official position of the European Union? The European Union has accepted the vote of British citizens, with Michael Barnier appointed by the European Commission as the EU's negotiator to represent the interests of the 27 member states.

The process of withdrawing the United Kingdom from the European Union (Brexit) was completed on 31 January 2020, as a result of which the withdrawal agreement entered into force on 1 February 2020, the date from which the United Kingdom became the third country with all legal consequences of this quality.

This marked the beginning of a transitional⁵ period that lasted until 31 December 2020, so that throughout this period, the United Kingdom applied European Union law⁶ and remained part of the Customs Union and the Single Market, but was no longer represented at the institutional level nor at the level of the decision-making process. Thus, until the end of the transition period, there were no changes for EU and UK nationals, consumers, researchers, students and businesses.

In this context, some clarification is needed in the sense that, as a result of Brexit, the United Kingdom becomes an extra-EU state as a result of which its citizens acquire the status of non-EU nationals. With such a status and the appropriate legislation for their stay in the EU, it acquires specific nuances, in the sense that the provisions of Directive 2008/34 / EC are

³ According to Article 50 of the Treaty of Lisbon, "Any Member State of the European Union may decide to withdraw from the Union in accordance with its own constitutional requirements. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State setting out the arrangements for its withdrawal, taking into account its future relations with the Union. This Agreement shall be negotiated in accordance with Article 218 (3) of the Treaty on the Functioning of the European Union. It shall be concluded by the Council acting on behalf of the Union, acting by a qualified majority, after obtaining the consent of the European Parliament. The Treaties shall cease to apply to the State concerned from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification provided for in paragraph 2, unless the European Council, in agreement with the Member State in decide unanimously to extend this period. For the purposes of paragraphs 2 and 3, a Member of the European Council or of the Council representing the withdrawing Member State shall not take part in the deliberations of the European Council or the Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238 (3) (b) of the Treaty on the Functioning of the European Union. If a State which has withdrawn from the Union requests to rejoin, its application shall be subject to the procedure laid down in Article 49."

⁴Ioana Nely Militaru, *European Union Law, Chronology. Springs. Principles. Institutions. The internal market of the European Union. Fundamental Freedoms*, 3rd Edition, revised and added, Universul Juridic, Bucharest, 2017

⁵ The transition period represents the period provided in art. 126 of the Withdrawal Agreement

⁶ Ioana Nely Militaru, *European Union Law, Chronology. Springs. Principles. Institutions. Second edition*, revised and added, Universul Juridic, Bucharest, 2011

no longer applicable to them, consequently, the regulatory framework for the protection of the rights and interests of British citizens constitutes the Withdrawal Agreement.

Regarding the regulation of the status of British citizens on the territory of Romania, the Government Emergency Ordinance no. 204 of 23 November 2020 was adopted on the establishment of measures to implement the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and of the European Atomic Energy Community, in matters of the regulation of the right of entry and residence on the territory of Romania⁷.

II. Regulation of the right to enter and stay in the territory of Romania recognized to British citizens - beneficiaries of art.50 TEU, within the meaning of GEO no.204 / 2020

2.1. Concepts. Definitions

This ordinance establishes rights and regulates obligations for the beneficiary of Article 50 of the Treaty on European Union, respectively for the British citizen located in Romania and who continues to reside in Romania after the end of the transition period⁸, as well as his / her family members who either accompany them or join them after the end of the transition period, provided they have had the quality of family members before the transition.

We must keep in mind that the status of British citizens benefiting from Article 50 TEU on the territory of Romania is distinct both in relation to the status of non-EU nationals, called "foreigners" in the vision of GEO no. 194/2002 on the legal regime of foreigners⁹, also differing from citizens to the member states of the European Union, as regulated by GEO no. 102/2005 on the free movement on the Romanian territory of the citizens of the member states of the European Union, the European Economic Area and the citizens of the Swiss Confederation, republished, with subsequent amendments and completions¹⁰.

The family members of the British citizen, within the meaning of article 2 of GEO no. 204/2020, mean the persons, regardless of citizenship, who accompany him/her in Romania and are in one of the following situations:

- I. *Husband or wife* of a British citizen benefiting from Article 50 TEU;
- II. *Descendants in a straight line*, including those who have been adopted, who have not reached the age of 21 or who are dependent on the British citizen benefiting from Article 50 TEU or those of their spouse or partner;
- III. *Direct ascendants*, who are dependent on the British citizen benefiting from Article 50 TEU or those of the spouse or partner;
- IV. *Partner* means the person who coexists with the British citizen beneficiary of Article 50 TEU, if the partnership is registered according to the law of the state of origin or provenance or, if the partnership is not registered, the cohabitation relationship can be proved;
- V. *The dependent person* is any other member of the family who, in the country of origin or provenance, is in maintenance or co-management with the British citizen benefiting

⁷Published in the Official Gazette no. 1132 of November 25, 2020.

⁸ The period provided for in Article 126 of the Withdrawal Agreement

⁹ GEO no. 194/2002 regarding the legal regime of foreigners was amended and supplemented by Law no. 309/2004, by Law no. 482/2004, by Law no. 482/2004, by Government Emergency Ordinance no. 113 / 2005 respectively by Law no. 56/2007 and republished pursuant to art. 7 of the Government Emergency Ordinance no. 55/2007 regarding the establishment of the Romanian Immigration Office through the reorganization of the Authority for Foreigners and of the National Office for Refugees.

¹⁰ GEO no. 102/2005 on the free movement on the Romanian territory of the citizens of the member states of the European Union, the European Economic Area and of the citizens of the Swiss Confederation was published in the Official Gazette of Romania, Part I, no. 646 of July 21, 2005, was approved with amendments and completions by Law no. 260/2005, was amended and supplemented by Government Ordinance no. 30/2006 and republished pursuant to art. III of Law no. 80/2011

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from Article 50 TEU, or is in a situation where, for serious medical reasons, his personal assistance is required;

VI. The frontier worker means the British citizen beneficiary of article 50 TEU who does not have the citizenship on the Romanian territory, but is employed in Romania before the end of the transition period and continues his activity even after this period.

2.2. The right of temporary residence granted to British citizens benefiting from Article 50 TEU

British citizens benefiting from Article 50 TEU who entered Romania between 1 and 31 December 2020, may request, within 90 days of entry, the extension of the right of temporary residence under the Withdrawal Agreement, to the territorial formations of the Inspectorate General for Immigration.

Also, British citizens who hold documents certifying a temporary residence as a Union citizen, acquired under GEO no. 102/2005 with subsequent amendments and completions, may request the extension of the right of temporary residence in Romania under the Withdrawal Agreement and GEO no. 204/2020 to the territorial formations of the General Inspectorate for Immigration starting with December 1, 2020 and until December 31, 2021 at the latest.

In order to admit the request for extension of the right of temporary residence on the Romanian territory, the British citizens must prove the fulfillment of the following conditions:

- a) possess a valid document for crossing the border
- b) are not registered by the authorities as persons who represent a danger to national defense and security
- c) prove the legal ownership of a living space¹¹
- d) prove that they have the financial means to support themselves¹² and their family members, at least at the minimum guaranteed level in Romania.

If, on the basis of the documents submitted by the beneficiary of art. 50 TEU, the General Inspectorate for Immigration finds that the above mentioned conditions are not met in order to extend the right of temporary residence, within 30 days from the finding, he / she may present any documents necessary for the favorable settlement of the application.

Provided that, even after this deadline, it is found that the reason for the refusal remains, the General Inspectorate for Immigration issues a decision refusing the issuance of the temporary residence permit indicating the reasons for the refusal, the competent court and the time limit attacked¹³. Against the refusal to issue a temporary residence permit, an action may be filed in administrative litigation within 10 days from the communication of the decision by the General Inspectorate for Immigration¹⁴.

Following such a measure, the British citizen must leave the territory of Romania within 30 days from the date of communication of the decision to refuse the issuance of the temporary residence permit.

Decisions:

- which provides for the immediate leaving of the Romanian territory, as well as
- decisions to refuse the issuance of a temporary residence permit, whose term of departure has not been met

¹¹ And he / she actually lives at the address where he declares that he / she has his/ her residence or domicile, see in this sense art.7 paragraph (1) letter (c) of the GEO. nr.204 / 2020

¹² Proof of means of subsistence can be provided with a salary certificate, pension slip, single income tax return, bank statement or other equivalent documents. In the case of students, the proof of the means of maintenance can be made by a statement on their own responsibility.

¹³ See in this sense art.9 paragraph (1) of GEO no.204 / 2020

¹⁴ See in this sense art. art.9 paragraph (1) of GEO no.204 / 2020 modified by the sole article of Law no.77 / 2021

they are executed or the exhortation of the person in question, within 24 hours, to the border or even to the country of origin by the specialized personnel within the General Inspectorate for Immigration, otherwise he/ she can be taken into public custody¹⁵ at the same time. with the notification of the criminal investigation bodies for committing the crime provided in art.262 paragraph (2) letter (b) of Law no.286 / 2009 on the Criminal Code with subsequent amendments and completions¹⁶ .

2.3. The right of permanent residence on the territory of Romania, recognized to the British citizens beneficiaries of art.50 TEU

In view of the provisions of Article 6 (1) of the Ordinance, the right of permanent residence in Romania is granted to British citizens benefiting from Article 50 TEU if until 31 December 2020, they have obtained permanent residence as nationals, under the conditions of article 20 paragraph (1) of GEO no. 102/2005 republished with the subsequent modifications and completions¹⁷ .

In these conditions, the British citizen, in order to maintain his permanent residence on the Romanian territory starting with January 1, 2021, must request the issuance of the permanent residence permit until December 31, 2020, fulfilling the following conditions:

- a) Possess a valid document for crossing the border¹⁸
- b) are not registered by the authorities as persons who represent a danger to national defense and security
- c) prove the legal ownership of a living space.

In accordance with the provisions of Article 13 of the ordinance, the right of permanent residence is recognized, upon request and:

- i. to the British citizens beneficiaries of art.50 TEU who entered Romania between 1 and 31 December 2020 and who were granted the right of temporary residence based on this ordinance;
 - ii. British citizens benefiting from art.50 TEU who hold documents certifying a temporary residence as a union resident, acquired on the basis of GEO no.102 / 2005
 - iii. family members who join the British citizen beneficiary of art. 50 TEU, after the end of the transition period, respectively, starting with January 1, 2021 until September 30, 2021
 - iv. family members who join the British citizen beneficiary of art. 50 TEU, after the end of the transition period, respectively, starting with October 1, 2021 until December 31, 2021
- but with the cumulative fulfillment of the following conditions:

- had the right of temporary residence on the territory of Romania continuously for the last 5 years prior to the submission of the application, and during all this period no removal measures from the territory of the country were ordered against them;
- prove that they have the financial means to maintain themselves at the minimum guaranteed level in Romania;
- prove the legal ownership of a living space;

- d) It does not constitute a threat to national security or public order¹⁹.

Regarding the status of the minor, family member of the British citizen, beneficiary of art. 50 TEU, this can obtain the right of permanent residence on the Romanian territory,

¹⁵See in this sense GEO no.192/2002 on the legal regime of the elderly republished with subsequent amendments

¹⁶ "Fraudulent crossing of the state border" - paragraph (1) Entering or leaving the country by illegally crossing the state border of Romania is punishable by imprisonment... .. paragraph (2) If the deed provided in paragraph (1) has been committed: ... Read (b) by an undesirable foreigner or who has been denied in any way the right to enter or stay in the country, the penalty is... "

¹⁷ "Citizens of the European Union who have a continuous and legal residence on the territory of Romania for a period of at least 5 years benefit from the right of permanent residence".

¹⁸ Including the criminal record certificate or any other document with the same legal value issued by the authorities of the state of domicile or residence, see for more details art.12 paragraph (2) of GEO no.204 / 2020

¹⁹ The condition is considered fulfilled if the non-beneficiary of art. 50 TEU, did not intentionally commit crimes on the Romanian territory for which a custodial sentence of more than 5 years was applied, see in this sense art.13 paragraph (1) letter (e) of GEO no.204 / 2020

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without fulfilling any condition, except the one according to which both parents are entitled to permanent stay. If only one of the parents holds the right of permanent residence, the consent expressed in the authentic form of the other parent is required.

To what extent are the periods of absence from the territory of Romania considered interruptions in the calculation of the five years? Thus, the interruptions²⁰ in the calculation of the five years are not considered:

- i. temporary absences from the territory of Romania that do not exceed 6 months within a year;
- ii. absence from the territory of Romania for the satisfaction of compulsory military service;
- iii. absence from the territory of Romania for justified reasons such as pregnancy, childbirth, serious illness, participation in education or training programs or moving in the interest of service to another Member State of the European Union or a third country, for a period for a maximum of 12 consecutive months;
- iv. the period in which a period of deprivation of liberty was executed on the territory of Romania, less than 6 months.

2.4. The rights recognized to the family members of the British citizen beneficiary of art.50 TEU

In accordance with the provisions of Article 8 of the Ordinance, family members who join the British citizen beneficiary of Article 50 TEU, from 1 January 2021 to 30 September 2021 may request the extension of the right of temporary residence in Romania until 31 December 2021. Instead, family members who join the British citizen beneficiary of art. 50 TEU, starting with October 1, 2021, may request the extension of the right of temporary residence within a maximum of 90 days from the date of entry into Romania. For both situations they have to prove that:

- a. there is a kinship or partnership relationship with the beneficiary of art. 50 TEU;
- b. there are documents showing that the presence on the Romanian territory of the British member's family member is necessary for the latter in order not to be deprived of the right to family or partnership reunification.

At the same time, the right of temporary stay in Romania of the family members can be extended individually for each one, provided that the application is accompanied by the documents proving that:

- a) they possess valid documents for crossing the border
- b) they are not registered by the authorities as persons who represent a danger to national defense and security
- c) they prove the legal ownership of a living space
- d) they prove that they have the financial means to live at the minimum guaranteed level in Romania;

The family members of the British citizen beneficiary of art. 50 TEU, who join him after the end of the transition period²¹ can obtain:

- an entry visa on the territory of Romania which is obtained free of charge by following an accelerated procedure;
- the visa for a temporary stay is granted, upon request for a period of 90 days during a period of 180 days, with multiple entries and valid for one year;

In order to obtain a temporary stay, the applicant, a family member will have to present the following supporting documents:

- I. A valid border crossing document;

²⁰ Proof of the continuity of the permanent stay on the territory of Romania, which is the responsibility of the applicant and can be made by any means of proof.

²¹ See also for details on Article 18(1) (m) of the Withdrawal Agreement

- II. The copy of the residence permit of the beneficiary of art. 50 TEU accompanied by an authenticated statement from the latter stating the existence of the family relationship or partnership at the time of the request and the fact that they agreed that the applicant should join him/her;
- III. Proof regarding the reason for which he did not request the registration as a family member of the beneficiary of art. 50 TEU within the transition term mentioned in this ordinance.
- IV. Supporting documents²² necessary to prove the continuity of the family relationship or partnership at the time of applying for the temporary residence visa

CONCLUSIONS

Brexit has been seen by a significant number of Union nationals as a threat to the values²³ and benefits of the European Union, and people have become more responsible for their common European future.

On the other hand, the same unionists believe that the British are not breaking away from the European Union as dramatically as many feared. But the move by the United Kingdom remains a "historic mistake," according to Bernd Riegert.

As Paul Craig states in his article, Brexit is a serious incident, contrary to the goals of political and economic integration and opposed to the idea of a "deeper union between the peoples of Europe"²⁴.

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²² See also for details on Article 10 (1) (e), (3) and (4) of the Withdrawal Agreement.

²³ Ioana Nely Militaru, *Protection of Fundamental Rights in the European Union*, International Conference, "Perspectives of Business law in the Third Millennium" November 8, 2019, ninth edition, Bucharest, Section III. *European Union Law. International Law*, Volume 8, Issue 2, 2019

²⁴ Paul Craig, "Brexit, a Tragedy: The Interregnum", in *European Law Review*, Bucharest Issue 3, (2017), pp. 21-59

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