



Right by you in Luxembourg

## NEWSFLASH | Rights of British nationals in Luxembourg after Brexit

As the exit of the United Kingdom (“UK”) from the European Union (“EU”) will have consequences for the rights of British nationals to reside and access employment in Luxembourg, the Luxembourg Government has recently published an [information folder](#) on Brexit.

In this respect, the impact of Brexit will differ depending on whether the withdrawal agreement agreed between the European Commission and the UK in November 2018 (the “**Withdrawal Agreement**”) is ratified or not. If the Withdrawal Agreement is ratified before October 31<sup>st</sup> 2019, it will enter into force on the first day of the following month. A transitional period will apply until December 31<sup>st</sup> 2020, during which Union law will continue to apply in the UK. However, if the UK is still a member of the EU between May 23<sup>rd</sup> and May 26<sup>th</sup> 2019 and has not ratified the Withdrawal Agreement by May 22<sup>nd</sup> 2019, it must hold elections to the European Parliament in accordance with Union law. If the UK fails to comply with this obligation, the Withdrawal Agreement will enter into force on June 1<sup>st</sup> 2019.

### I. In the event of the entry into force of the Withdrawal Agreement

#### A. Right of residence of British nationals and their family members

British nationals and their family members will continue to benefit from a **right of residence** in the Member States of the EU after the UK’s withdrawal from the EU. This concerns:

- British nationals and their family members residing in Luxembourg **before Brexit**;
- British nationals and their family members arriving in Luxembourg **after Brexit but before the end of the transitional period** (December 31<sup>st</sup> 2020);
- persons who are family members of a British national covered by one of the two previous points and who arrive in Luxembourg **after the end of the transitional period** (January 1<sup>st</sup> 2021).

British nationals and their family members covered by the Withdrawal Agreement will thus be able to benefit from a right of residence in Luxembourg despite the withdrawal of the UK from the EU, **even after the end of the transitional period**, on the same basis as EU citizens.

The persons concerned by the Withdrawal Agreement will be issued with a specific residence document, which will attest their status as beneficiaries of the Withdrawal Agreement.

#### B. Access to the employment market for British nationals and their family members

British nationals and their family members covered by the Withdrawal Agreement will enjoy the same rights as EU citizens to **access the employment market**.

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Thus, British nationals and their family members **residing in Luxembourg and employed in Luxembourg before Brexit** may continue to work in Luxembourg after Brexit without specific prior authorisation. The same rules will apply to:

- British nationals and their family members arriving in Luxembourg **after Brexit but before the end of the transition period** (December 31<sup>st</sup>, 2020);
- British national cross-border workers who started to work in Luxembourg **before December 31<sup>st</sup>, 2020**;
- Family members of a British national residing in Luxembourg before December 31<sup>st</sup> 2020, who will arrive in Luxembourg **after the end of the transitional period** (January 1<sup>st</sup> 2021).

However, British nationals and their family members who will arrive in Luxembourg **after December 31<sup>st</sup> 2020**, as well as cross-border workers who will start working in Luxembourg after that date, will no longer benefit from a right of access to the employment market, and should apply for a **residence permit as third-country nationals enabling them to exercise a salaried activity** in accordance with the amended law of August 29<sup>th</sup> 2008 on the free movement of persons and immigration (the "**Law of August 29<sup>th</sup> 2008**").

## **II. In the absence of ratification of the Withdrawal Agreement ("no deal")**

### **A. Right of residence of British nationals and their family members**

In the absence of a Withdrawal Agreement, British nationals will be considered as third-country nationals. This concerns:

- British nationals and their family members residing in Luxembourg before Brexit;
- British nationals and their family members who settle in Luxembourg after Brexit.

British nationals and their family members will therefore no longer benefit from a right of residence as EU citizens **after Brexit**. They will be considered third-country nationals and should apply for a residence permit on this basis pursuant to the Law of August 29<sup>th</sup> 2008.

However, for British nationals and their family members who are already residing in Luxembourg **before Brexit** on the basis of a residence permit issued in accordance with Directive 2004/38/EC

<sup>1</sup>, the Luxembourg Government has decided to allow them to continue to reside in Luxembourg after Brexit and **for one year after the withdrawal** on the basis of their current residence permit. However, after that date, the persons concerned should apply for a residence permit as third-country nationals in accordance with the Law of August 29<sup>th</sup> 2008.

### **B. Access to the employment market for British nationals and their family members**

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<sup>1</sup> Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.

In the absence of a Withdrawal Agreement, British nationals and their family members will be considered as **third-country nationals after Brexit**. They should therefore apply for a residence permit enabling them to exercise a salaried activity as third-country nationals in accordance with the Law of August 29<sup>th</sup> 2008.

However, British nationals and their family members who reside and have started their professional activity in Luxembourg **before Brexit** will have the possibility to continue to **reside** in Luxembourg after that date and **for one year after the withdrawal**, pursuant to their current residence permit<sup>2</sup>. However, they will have to apply for a residence permit in order to be able to **exercise a salaried activity**. The persons concerned will be able to **continue working until the residence permit is issued**. The same rules will apply to British nationals who are cross-border workers and who are already employed in Luxembourg before Brexit.

On the other hand, British nationals who arrive in Luxembourg **after Brexit** should **first apply for a residence permit as third-country nationals** in accordance with the Law of August 29<sup>th</sup> 2008, before they can reside and start working in Luxembourg. The same rules will apply to British nationals who are cross-border workers and wish to start working in Luxembourg after Brexit.

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<sup>2</sup> See footnote 1.

Summary table

	Right of residence of British nationals and their family members	Access to the employment market of British nationals and their family members	
<p><b>In the event of the entry into force of the Withdrawal Agreement</b></p>	<p>Right of residence in the Member States of the European Union (EU) after Brexit</p>	<p>Access to the Luxembourg employment market if:</p> <ul style="list-style-type: none"> <li>• residing and employed before Brexit;</li> <li>• arriving before December 31<sup>st</sup> 2020;</li> <li>• arriving after January 1<sup>st</sup> 2021 for family members of a British national residing in Luxembourg before December 31<sup>st</sup> 2020</li> </ul>	<p>Residence permit for third-country nationals enabling them to exercise a salaried activity needed if arriving in Luxembourg after December 31<sup>st</sup> 2020</p>
<p><b>In the absence of ratification of the Withdrawal Agreement (“no deal”)</b></p>	<p>No right of residence in the EU after Brexit – Residence permit for third-country nationals needed</p> <p>If already residing in Luxembourg before Brexit, residence permit for third-country nationals needed one year after the withdrawal</p>	<p>No access to the employment market after Brexit – Residence permit for third-country nationals enabling them to exercise a salaried activity needed</p>	



## For more info

 A black and white portrait of Anne Morel, a woman with long dark hair, wearing a dark leather jacket, sitting at a table with her hands clasped.	<p><b>Anne Morel</b> <i>Partner</i> <a href="mailto:amorel@bsp.lu">amorel@bsp.lu</a></p> <p>Employment, Compensation &amp; Benefit</p>
 A black and white portrait of Pauline Wirtz, a woman with shoulder-length hair, wearing a dark blazer over a white top, sitting at a table with her hands clasped.	<p><b>Pauline Wirtz</b> <i>Junior Associate</i> <a href="mailto:pwirtz@bsp.lu">pwirtz@bsp.lu</a></p> <p>Employment, Compensation &amp; Benefit</p>